

TRANSCRIPT OF PROCEEDINGS

In the Matter of:)
)
PUBLIC HEARING ON MSHA'S)
EMERGENCY TEMPORARY STANDARD)
FOR EMERGENCY MINE EVACUATIONS)

Pages: 1 through 124

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(202) 628-4888
hrc@concentric.net

DEPARTMENT OF LABOR
Mine Safety and Health Administration

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PUBLIC HEARING ON MSHA'S)
EMERGENCY TEMPORARY STANDARD)
FOR EMERGENCY MINE EVACUATIONS)

Sheraton Suites-Ballroom A&B
2601 Richmond Road
Lexington, Kentucky

Wednesday
April 26, 2006

The hearing in the above-entitled matter was
convened, pursuant to Notice, at 9:08 a.m.

BEFORE: Patricia W. Silvey,
Moderator

APPEARANCES:

PHUC PHAN
ROBERT SNASHALL
JEFFERY KRAVITZ
PATRICIA W. SILVEY
ERIC SHERER
THOMAS McLEOD
KEN SPROUL
DEBRA JANES

SPEAKERS:

EDGAR OLDHAM
BILL CAYLOR
TONY OPPEGARD
MARK WATSON
PEARL FARLER
KEN RUSSELL
MICHAEL JOSEPH
TIM BAKER

P R O C E E D I N G S

(9:08 a.m.)

MS. SILVEY: Good morning. My name is Patricia W. Silvey. I am the Acting Director of the Office of Standards, Regulations, and Variances for the Mine Safety and Health Administration. I will be the moderator of this public hearing on MSHA's emergency temporary standard, or ETS, for emergency mine evacuations.

At this moment, I'd like to ask you if you would join me and if we could have a moment of silence in honor of the miners who lost their lives at the Sago Mine accident and the Aracoma Alma No. 1 Mine, and also the miners who were injured in those accidents, and for all the miners who have died so far this year and have been injured, and for the miners who have lost their lives working in this nation's mines from the beginning. So, if you would join me in a moment of silence?

(Moment of silence.)

MS. SILVEY: Thank you. On behalf of Secretary of Labor Elaine Chao, Acting Assistant Secretary of Labor for the Mine Safety and Health Administration David G. Dye, I want to welcome all of you here today. Also attending this public hearing are several individuals from MSHA who are on the committee drafting this rule. And they are, to my left: Eric Sherer of the Coal Mine Safety and Health Division and

1 Chair of the rule making committee; Jeffery Kravitz, Chief
2 of Mine Emergency Operations and MSHA's Pittsburgh Safety
3 and Health Technology Center and the Office of Technical
4 Support; Thomas -- oh, I just, excuse me. Jeffery Kravitz,
5 by the way, is to my right. I was going down to my left and
6 looking at this. And Tom McLeod to Eric's left, and Tom
7 McLeod is with our Educational Policy and Development Office
8 in Arlington. Ken Sproul who is with our Office of
9 Technical Support, Quality Assurance Division.

10 Now, to Jeff's right, Robert Snashall who is our
11 Lawyer on the committee from the Department of Labor, Office
12 of Solicitor; Mr. Phan who is the Economist from my office,
13 and Debra Janes, who is the Regulatory Specialist from my
14 office.

15 This is the second public hearing, second of four
16 hearings on the emergency standard. The first hearing was
17 held on Monday in Denver, Colorado. The third hearing will
18 be this Friday in Arlington. And the fourth hearing will be
19 in Charleston, West Virginia on May 9th. I think we have
20 copies of the Emergency Temporary Standard, as well Volumes
21 1 and 2 of the Compliance Guide that this should address and
22 questions that have been raised thus far in this rule
23 making.

24 As some of you know who participated in hearings
25 with us before, the purpose of these hearings is to receive

1 information from the public that will help us evaluate the
2 requirements contained in the emergency standard and produce
3 a final rule that promotes safe and effective evacuation of
4 miners during mine emergencies. We will also use the data
5 and information gained from these hearings to help us craft
6 a rule that responds to the needs and concerns of the mining
7 public so that the provisions of the emergency standard can
8 be implemented in the most effective and appropriate manner.

9 We publish the ETS in response to the grave danger
10 to which miners are exposed during underground coal mine
11 accidents. The ETS includes requirements in four areas.
12 The first area, immediate accident notification, is
13 applicable to all underground and surface mines, both coal
14 and metal/non-metal. The three other areas covered by the
15 rule (self-contained self-rescuer storage and use,
16 evacuation training, and installation and maintenance of
17 lifelines) apply only to underground coal mines. During
18 these four hearings, we will solicit public input on these
19 issues. The hearings will give manufacturers, mine
20 operators, miners and their representatives, and other
21 interested parties an opportunity to present their views on
22 these issues.

23 MSHA issued the emergency standard on March 9th in
24 response to the tragic accidents at the Sago Mine on January
25 2nd and the Aracoma Alma No. 1 Mine on January 19th. MSHA

1 determined that better notification, safety, and training
2 standards are necessary to further protect miners when a
3 mine accident takes place.

4 The ETS was issued in accordance with Section
5 101(b) of the Federal Mine Safety and Health Act of 1977.
6 Under Section 101(b), the emergency standard is effective
7 upon publication until superseded by a mandatory standard.
8 And under the Mine Act, the mandatory standard must be
9 published within nine months of the publication of the
10 emergency standard. The emergency standard also serves as
11 the proposed rule.

12 As stated earlier, we will use the information
13 provided by you to help us decide how best to craft the
14 final rule. In addition to the provisions of the emergency
15 standard, we are also considering the following issues and
16 seek further information from you. And we are considering
17 the following issues to help further clarify the provisions
18 of the emergency standard. As you address these issues,
19 either in your comments to us today or those sent to us in
20 Arlington, please be as specific as possible with respect to
21 impact on miner safety and health, mining conditions, and
22 feasibility of implementation.

23 Additional issues:

24 1. Should miners have the ability to tether themselves
25 together during escape through smoke-filled environments?

1 If so, what length of tether between miners should be
2 required? Should a miner's tether be capable of clipping
3 easily to another's so that any number of miners could be
4 attached together to work their way out of the mine? How
5 should the tether be attached to the miners' belts? Or
6 should there be a place other than the miners' belts to
7 attach the tether? Should the tether be constructed of
8 durable and/or reflective material? Where should the tether
9 be stored on the section or could it be a part of the
10 miner's belt? Should it be stored with the additional SCSRs
11 in a readily accessible and identifiable location, or in a
12 separate location?

13 2. Should a training record under paragraph (c)(3) of
14 75.1502 not only include a requirement that mine operators
15 certify, by name, all miners who participated in each
16 emergency evacuation drill, but also additional information
17 such as a checklist? The checklist could be used to itemize
18 the successful completion of each step of the training, as
19 outlined in the approved program of instruction.

20 3. When should a miner don an SCSR during an
21 evacuation? Currently, miners are told to don an SCSR when
22 they believe they are in danger or when smoke is
23 encountered. This may leave miners vulnerable to
24 irrespirable air, such as air that contains lethal carbon
25 monoxide levels or low oxygen. MSHA is considering

1 requiring that at least one miner in a group of miners, or
2 an individual miner if working alone, have at least one
3 multi-gas or air quality detector with them.

4 4. In the preamble to the ETS, we discussed a method
5 to locate additional SCSRs based on a joint MSHA-NIOSH heart
6 rate study. MSHA solicits comments on the heart rate
7 method, whether this is the most appropriate method to
8 determine location, whether it is realistic, and any other
9 comments that you may have on the heart rate method. What
10 other reliable alternatives exist for determining where to
11 position additional SCSRs in the mine?

12 5. MSHA is considering a requirement that additional
13 SCSRs under 75.1714-4(c) be stored in all escape ways at
14 intervals of 5,000 feet for mines where the escape way
15 height is above 48 inches and 2,500 feet for all other
16 mines. Would such a specification standard be more
17 appropriate than the performance oriented heart rate method
18 provided in the ETS? Regarding such a specification
19 standard, what would be more appropriate? 5,000 and 2,500-
20 foot intervals for heights greater than 48 inches, and
21 heights 48 inches or less respectively, or some other
22 specific interval?

23 6. Should all underground coal miners be required to
24 use SCSRs exclusively? If so, is it appropriate to prohibit
25 the use of filter self rescuers in all underground coal

1 mines? In addition, MSHA is considering adding a new
2 provision to 75.1714-4 that would allow the use of new SCSR
3 technology to meet the requirements of the standard, such as
4 SCSRs that have the ability to provide up to two or more
5 hours of oxygen per unit. Is such a provision appropriate?

6 7. Manufacturers sometime lose track of which mines
7 purchased their SCSRs. When a mine shuts down, the SCSRs
8 are often sold to another mine. In the past, problems have
9 been discovered with all brands of SCSRs. MSHA is
10 considering requiring that the following information be
11 reported for each SCSR at the mine: the total number of
12 SCSRs, the manufacturer, the model, the date of manufacture,
13 and the serial number. Is it appropriate to require mine
14 operators to report to the relevant MSHA District Manager
15 the total number of SCSRs in use at each mine? If so,
16 should any additional information be reported?

17 8. Because in the past MSHA did not always learn of
18 problems associated with SCSRs, MSHA is considering a
19 requirement that mine operators promptly report to the MSHA
20 District Manager in writing all incidents where any SCSR
21 required by Section 75.1714 is used for an accident or
22 emergency, and all instances where such SCSR devices do not
23 function properly. In addition, when any SCSR device does
24 not function properly, the mine operator would be required
25 to retain the device for at least 90 days for investigation

1 by MSHA. These requirements would help assure that MSHA is
2 notified of problems in a timely manner so that MSHA can
3 provide timely notice to both manufacturers and users and
4 assure that the affected SCSRs are available for testing and
5 evaluation. Should MSHA include such requirements in the
6 final rule?

7 9. SCSR storage locations and escape ways may not be
8 readily accessible to all persons underground such as
9 pumpers, outback crews, and examiners. Are there other ways
10 to provide readily accessible SCSR coverage for these mines?
11 Are there other storage locations that would be readily
12 accessible to such persons?

13 10. MSHA sought comments on the appropriateness of
14 requiring that signs to help locate SCSR storage areas be
15 made of a reflective material. MSHA also asked whether
16 there are alternative methods available for making SCSR
17 storage locations easy to locate when conditions in the mine
18 might obscure storage location. What methods exist that
19 would make SCSR storage locations readily visible?

20 11. On the new 75.1714-4(c), operators are required to
21 have separate SCSR storage in each escape way where a mine
22 has parallel and adjacent escape ways. Under what
23 circumstances would it be appropriate to allow a hardened
24 room or "safe haven" to serve both escape ways with one set
25 of SCSRs? A hardened room is a room constructed with

1 permanent seal techniques, submarine-type doors opening to
2 both escape ways, and positive ventilation from the surface
3 through a borehole. Is a safe haven an acceptable
4 alternative? If so, what should be the minimum criteria for
5 MSHA to accept a hardened room or safe haven?

6 12. Currently, cone systems on lifelines vary, some
7 with the cones pointing toward the face, and other pointing
8 away from the face. Miners may become confused in an
9 emergency as to the direction of escape. Should cones or
10 other directional indicators on lifelines be standardized?
11 Following a NIOSH recommendation and for ease of movement,
12 should the point end of the code be toward the face?

13 13. Miners should be able to safely evacuate a mine
14 without the use of mechanized transportation. There may be
15 unique escape way conditions including ladders, man doors,
16 air locks, and overcasts where hands-on experience of these
17 conditions is required in order to quickly and safely escape
18 the mine. It is reasonable to require that miners walk the
19 escape ways at least under these unique escape way
20 conditions. Should all miners be required to walk the
21 escape way in its entirety rather than use mechanized
22 transportation during the drills required by 75.1502(c)? We
23 are considering including a requirement in the Part 48
24 training program for new miners, that new miners travel at
25 least in part both escape ways. Would this training be

1 appropriate? And should the training include walk in part
2 or all of the escape ways?

3 14. A more instructive emergency evacuation practice
4 may be provided by using realistic drills. For example,
5 conducting a drill in smoke or using a realistic mouthpiece
6 that provides the user with the sensation of actually
7 breathing through an SCSR commonly referred to as
8 expectations training, these are more realistic than
9 simulation training. What other realistic emergency
10 evacuation practices and scenarios would ensure that miners
11 are better prepared to act quickly and safely in an
12 emergency? We intend that scenarios required by the
13 approved program of instruction under 75.1502(a) be used to
14 initiate the drill and to conduct the mine emergency
15 evacuation drills required by 75.1502(c).

16 For example, to initiate the drill, the section
17 foreman may choose one of the mines approved explosion
18 scenarios. The foreman would gather the miners on the
19 section and state where the explosion occurred, provide any
20 special circumstances of the event and conditions requiring
21 immediate donning of SCSRs. The foreman and miners would
22 then physically follow the best options for evacuation as
23 they evacuate the mine. When the miners travel to the place
24 or into conditions that require immediate SCSR donning, the
25 need to don the SCSR must be made clear so that it is

1 understood by all.

2 15. We expect that the scenarios developed as part of
3 the mine emergency and firefighting program of instruction
4 under 75.1502(a) would be included as part of the emergency
5 evacuation drills under 75.1502(c), making the drills more
6 realistic. Should we further clarify this issue in the
7 final rule? Or are there additional requirements that
8 should be included in this training to make it more
9 realistic, such as conducting SCSR donning in a smoke-filled
10 environment?

11 16. We are considering putting all emergency
12 evacuation drill requirements in 75.1502. Thus, for
13 example, the escape way drill requirements under 75.383
14 pertaining to frequency of drills, how far miners travel in
15 the drills, and the number of miners involved in each drill
16 would be incorporated in two requirements under 75.1502.
17 Under 75.383(b)(1), each mine must participate in a practice
18 escape way drill at least once every 90 days, but is only
19 required to travel to the area where the split of air
20 ventilating the working section intersects a main air course
21 or 2,000 out by the section loading point, whichever
22 distance is greater. Under new 75.1502, during the
23 emergency evacuation drills, the miners must travel to the
24 surface or to the exits at the bottom of the shaft or slope.

25 Section 75.383(b)(2) and (b)(3) require that

1 practice escape way drills occur at least once every six
2 weeks, but only involve two miners and a supervisor. Miners
3 systematically rotate taking these drills so that eventually
4 all miners participate. Under new 75.1502, emergency
5 evacuation drills are required for all miners, and at
6 periods of time not to exceed 90 days. We will have to
7 reconcile these differences. MSHA is requesting comments on
8 incorporating all evacuation drill requirements in 75.1502.

9 We are also considering requiring section bosses to travel
10 both escape ways in their entirety prior to acting as a boss
11 on any working section or at any location where mechanized
12 mining equipment is being installed or removed.

13 17. We are also considering requiring that all mine
14 fires be reported to MSHA including fires shorter than 30
15 minutes duration. This would address all mine fire hazards,
16 including situations where a number of short duration fires
17 occur. Should the definition for "accident" in 50.2(h)(6)
18 be revised to include all unplanned underground mine fires,
19 or fires of a particular type or duration, or occurrences at
20 particular locations in the mine?

21 At the time that I left Arlington, we had received
22 two comments on this emergency standard, and whatever
23 comments we received, you can view the comments on our
24 website at www.msha.gov under the section entitled "Rules
25 and Regulations." We have also answered several questions

1 on compliance with the ETS covering a range of issues.

2 These questions and answers are included in the compliance
3 guides that I referred to earlier. As well, they are posted
4 on our website.

5 Finally, we have received questions as to whether
6 the emergency evacuation training provisions for metal and
7 non-metal mines are affected by the ETS. While the ETS
8 amends Part 48 by adding references to the requirements for
9 emergency evacuation plans in existing 57.11053 for
10 underground metal and non-metal mines, this reference does
11 not affect the existing training requirements for metal and
12 non-metal mines, and it is our intent not to change the
13 existing Part 48 emergency evacuation training provisions
14 for metal and non-metal mines. We will clarify this in the
15 final rule.

16 As some of you know who participated in these
17 hearings, the format of this public hearing will be as
18 follows. Formal rules of evidence will not apply and this
19 hearing will be conducted in an informal manner. Those of
20 you who notified MSHA in advance will speak and those of you
21 who signed up today will also speak. After all scheduled
22 speakers have finished, others, if there are others who wish
23 to speak, you will be allowed to do so.

24 We also have an attendance list here and ask you
25 to please make sure to sign the attendance list before you

1 leave if you haven't done so already. If you wish to
2 present written statements or information today, please
3 clearly identify your material. When you give it to me, I
4 will identify the material by the title as submitted. You
5 may also submit comments following this public hearing. To
6 be considered, they must be submitted to MSHA by 30 May 2006
7 which is the close of the comment period. Comments may be
8 submitted by any of the methods identified in the ETS, and
9 again, you may follow this rule making by looking on our web
10 page at www.msha.gov.

11 We will post transcripts of all of the public
12 hearings on our website. Each transcript should be posted
13 there approximately one week after the completion of the
14 hearing. The transcript will include the full text of my
15 opening statement and the specific issues for which the
16 Agency seeks additional comment.

17 We will begin now. Please begin by clearing
18 stating your name and organization for the reporter to make
19 sure that we have an accurate record when you speak. Our
20 first speaker today will be Edgar Oldham with the United
21 Mine Workers of America. Mr. Oldham?

22 MR. OLDHAM: As she said, I'm Edgar Oldham, O-l-d-
23 h-a-m, with the United Mine Workers of America. And first,
24 I'd like to say that I thank the panel for the opportunity
25 to speak today regarding the emergency temporary standard

1 that MSHA has implemented even though I'm not very pleased
2 with the way it's had to come about. As always, good
3 hardworking coal miners had to shed their blood in order to
4 get additional protections from MSHA and the Bush
5 Administration. It wasn't that many years ago that these
6 same issues were out there for the miners' benefit but were
7 laid to the side until the Sago Mine disaster rekindled
8 them.

9 Another thing that is on my mind is something that
10 my father has always told me, and that is you can run but
11 you can't hide. And that is exactly what the miners feel
12 MSHA and this administration is doing by having these
13 hearings in places far removed from the coal fields. Some
14 of the people that I represent would have to have traveled
15 10 to 12 hours just to get here today when MSHA could have
16 conducted additional hearings where participation would have
17 been a lot better.

18 But maybe you don't want to hear from the miners
19 themselves. Maybe you just want to go through the motions
20 like a lot of the coal companies do and just get it over
21 with enough to comply with the law. Don't bother to go that
22 extra mile for the safety of the miners.

23 I speak with miners, both union and non-union, on
24 a daily basis. And what trust they had in this Agency is
25 fading fast. And I'm telling you, it's out there. If this

1 Agency truly cares about miners' health and safety, they'd
2 better figure a way out to regain that trust.

3 One example that I want to discuss is that it
4 appears that MSHA intends to sugarcoat issues that it
5 uncovered during mine disasters, even as recently as the
6 Sago Mine disaster. MSHA was quoted in a recent news
7 article that out of all the violations that were written of
8 Sago during MSHA's investigation, that none of the
9 violations contributed to the disaster. In my opinion that
10 statement is false because I know for a fact that the EMS
11 warning system for the section where the 12 men died was
12 disconnected. Who knows how long the system had been
13 inoperable?

14 This system was supposed to warn miners in the
15 event of an emergency. But instead, it wasn't even working.

16 This was a system that was supposed to warn miners, but
17 instead was being used as a paging system when someone was
18 needed on the phone. According to individuals even at the
19 Sago Mine which I was a part of that investigation, this was
20 a common practice at this mine, and at other mines within
21 the area, just to use of the alarm system to page somebody
22 to come to the phone. Now, how much warning does that give
23 people? Or how much complacency does that give people?

24 Where was MSHA and the state when all this was
25 taking place? One would think that someone would discover

1 this practice at some point in time and take corrective
2 action. As far as MSHA's 15-minute rule for reporting
3 accidents, I believe the 15-minute reporting rule for
4 accidents should be just that and nothing more. When an
5 accident occurs at a mine, in most instances they call
6 outside for assistance. You can't tell me that while
7 they're making their calls to the superintendent, attorneys
8 and whoever else they call to protect themselves, they can't
9 take two minutes to call MSHA to notify them. So, I think
10 the 15-minute rule should be adhered to strictly.

11 It is my opinion and the opinion of the MWA that
12 all mine fires should be reported. We all know that a mine
13 fire is one of the most devastating events that can occur at
14 a mine. The Agency in recent years has been focusing on
15 near misses at mines when it comes to accidents and
16 injuries. Shouldn't the Agency be interested in the number
17 of near miss man fires that are occurring in our nation's
18 mines? This is probably one of the most under-reported
19 accidents in our mines. Why? Because we leave it to the
20 discretion of the company to decide how many minutes a fire
21 has been burning before it is extinguished. Fires need to
22 be reported plain and simple.

23 Training, the amount of training that is going to
24 be required for this rule should not be a part of the annual
25 retraining time. This training should be in addition to the

1 eight-hour annual retraining that is presently required. We
2 have absolutely stressed the eight-hour training programs to
3 the point that miners are not getting the quality training
4 they deserve. As a matter of fact, trainers are developing
5 training tapes they call catchalls that have several types
6 of subjects within the tape, and according to their training
7 plans, as long as the subject is covered in the training
8 session, they are in compliance. This is not the type of
9 training miners need or deserve.

10 As far as the lifelines, they are needed. They
11 should be fire resistant in my opinion. Above all, once
12 installed, they must be maintained. And in my opinion, they
13 should be, all of them should be put in the same way with
14 the cones directed toward the face where know them. I mean,
15 it's basically a standard that I've been used to in all of
16 the mines that I've ever been so why should we change
17 something, and people travel and go to different mines, all
18 across the country nowadays, so it should be a standardized
19 method.

20 Something that has not been mentioned much is
21 about the rescue chambers. You know, it's been in the regs
22 for years. The technology is there to use them. But MSHA
23 is still in denial of their benefit. And we'd have to think
24 about it. If the Sago miners had a rescue chamber available
25 to them, those miners would have walked out that mine and

1 they'd have been rescued.

2 With that being said, it is my opinion if the
3 company at Sago had been required to keep adequate
4 barricading material even on the section, the miners would
5 have had a better chance because they would have barricaded
6 the larger area. Instead, this is something that is
7 neglected at almost every mine across the country.
8 Emergency slides are not being maintained the way they
9 should with enough material to erect adequate barricades as
10 needed. I mean, you see it everyday when you go in the
11 mine. All you have to do is walk in those areas and look at
12 them. And if something is to be robbed there, they get it
13 and use it and it's not replaced. So, it's something that
14 needs to be taken care of.

15 As far as the records on SCSRs, I think with the
16 way companies are going bankrupt and selling and swapping
17 and doing everything, we need to track SCSRs. We don't know
18 the condition they are, where they was bought, what time
19 frame they was bought in. So, I think a tracking method
20 does need to be with SCSRs. I agree that miners should have
21 at least two SCSRs available to them on a section if they
22 have to evacuate the mine.

23 I don't agree with some of the distances being
24 proposed by some of the mining companies when they start
25 talking about 7,000 and 9,000 feet for storage areas,

1 especially in 60-inch or lower seams. I don't agree with an
2 individual's physical condition being the number one factor
3 in establishing these distances. Not one discussion have I
4 heard that deals with a smoke-filled entry or walking
5 conditions. And you know, when we talk about disasters,
6 we're not talking about perfect conditions, so there's got
7 to be a factor built in on these storage areas that allows
8 for all that to be factored in.

9 As far as the training, I think it should be more
10 realistic. You know, most instances, especially in a fire,
11 people are going to encounter smoke. Just putting on an
12 SCSR and walking out the intake entry is not very realistic.

13 So, you know, the more realistic, the more hands-on that we
14 can make this training for the miners, I think it will
15 better benefit people and give them the ability to escape
16 from the mines.

17 As far as the miners' reps, you know, I don't
18 read anywhere in this that includes either the miners or the
19 miners' reps in the planned development. And as always,
20 it's MSHA and the company making these decisions with no
21 input from these miners who are underground everyday. You
22 know, it's just not right to exclude those individuals from
23 this process. They're the ones that are affected, they're
24 the ones that know what will work, what won't work, and we
25 need to include those people in this process.

1 So, I appreciate the opportunity and thank you.

2 MS. SILVEY: Thank you.

3 MR. SHERER: Mr. Oldham, you talked about mine
4 fires being under-reported. Do you have any experience with
5 that? Could you give us any more information?

6 MR. OLDHAM: I mean, when an individual walks upon
7 a fire, they don't know how long that fire has been burning.
8 It may have already been burning for 30 minutes. So, once
9 they discover it, you know, and they work on it 15-20
10 minutes, it may have went 35-40 minutes before and still not
11 have to be reported. So, I mean, we don't know how long a
12 fire has been burning and we don't know how many of these
13 near misses that you're having in these mines. So, I think
14 it would lend itself to, here was a fire, what caused it,
15 was it accumulations of coal? And if you're having these on
16 a regular basis, at least you're going to have a better
17 tracking of how many instances that you had of just the fire
18 in a mine.

19 MR. SHERER: Thank you.

20 MR. McLEOD: I have a question on the annual
21 refresher training, Mr. Oldham. You discussed I believe a
22 concern that we have possibly added additional trainee
23 requirements in essentially Part 48.8, the annual refresher
24 training. Could you expand on that a little bit what your
25 concerns are?

1 MR. OLDHAM: I mean, if you look at every reg that
2 we've implemented and everything that we've done so far,
3 we've said add it to the annual refresher training, put it
4 in there somewhere. Well, when all those plans were
5 developed, everything was put in that plan that every
6 company thought should be covered at that time. So, you
7 keep adding stuff to it, you're taking away from something
8 where, I mean, at some point in time, look how much we took
9 away.

10 I know one thing that's a big complaint in our
11 area is first aid training. I mean, basically you watch a
12 little tape. It used to be hands on. They'd put bandages
13 on and really learn how to help people with first aid in the
14 mine. Now it's just a tape, there is no hands on. So, you
15 know, eventually it just went to watching tapes and not a
16 lot of hands on anymore. And I think we need to get back to
17 that because people were taking that a lot better.

18 MR. SHERER: So, your primary comment there is
19 that the quality of the training has gone down?

20 MR. OLDHAM: Due to the fact that we've kept
21 adding on to the programs, and every time we create a
22 regulation and says you have to put this in annual refresher
23 training or that training has to be done, you take away from
24 the eight-hour that was originally there and it's totally
25 intended purpose.

1 MS. SILVEY: If I understand it though, Mr.
2 Oldham, I think, I'm taking from what you said here is that
3 the SCSR training, you think that that ought to be in
4 addition to the training required by the eight-hour
5 training? That's the substance of your comment?

6 MR. OLDHAM: Right.

7 MR. McLEOD: Just maybe for a clarification. One
8 of the things that the ETS did for folks who do the 1502
9 drills which would be typically most miners, that all of the
10 SCSR training, the hands on, the donning, and then of course
11 we added the transferring to them, was actually moved from
12 annual refresher training to 1502. That's why I guess I'm a
13 little, I have a question in my mind because for the most
14 part we took stuff out of the annual refresher training in
15 the ETS for miners who will receive the 1502 drills.

16 The language was left in the annual refresher
17 training because there are people, typically probably
18 independent contractors, who may not routinely be part of
19 the 90-day drills. So, that language was left in there, but
20 for most people who are working in the mines on a full-time
21 basis and will get the 1502 drills, the SCSR component
22 within the annual refresher training was removed. I guess
23 that's why I was further asking your concern about adding
24 more stuff to the annual refresher training because we kind
25 of thought we took stuff out.

1 MS. SILVEY: I understand your point.

2 MR. SNASHALL: Mr. Oldham, you mentioned that the
3 15-minute notification rule should stand. Are you aware of
4 any situations where an operator has in effect had to make a
5 choice between saving somebody, initiating life saving
6 operation and stopping to make a contact to MSHA?

7 MR. OLDHAM: I'm not aware of that, but I'm aware
8 of situations because I serve on the Protective Mining
9 Board, and a for instance is where companies have not even
10 reported accidents and found out later that they was up here
11 in -- Medical Center about to die and it never was reported.
12 Two days later, a safety inspector finds out about it and
13 they had to go investigate something to try and put it all
14 together afterwards. So, that's why I think the 15-minute
15 rule is to be adhered to strictly because it's being abused,
16 even the reporting that we have presently. You know, it's
17 left up to the discretion whether it's a life-threatening
18 event or not to the company and their discretion is a little
19 bit different than mine.

20 MS. SILVEY: Thank you. Thank you very much. We
21 appreciate it. Our next speaker will be Bill Caylor with
22 the Kentucky Coal Association. Mr. Caylor?

23 MR. CAYLOR: My name is Bill Caylor with the
24 Kentucky Coal Association. It's a trade association located
25 here in Kentucky. In behalf of our industry, I'd like to

1 welcome you to Kentucky and also welcome you to Lexington.

2 What I'm going to do today is just go over some of
3 the concerns we have which somewhat parallels the summary
4 that was given prior to the start of this meeting. We will
5 submit detailed written comments toward the close of the
6 public comment period.

7 We have several comments and concerns, and that's
8 with the use of the different SCSRs on how you change from
9 one model to another if you do have an incidence. And we
10 have the concerns about the disclaimers by the
11 manufacturers, you know, that they will give you
12 instructions on how to change from one model to the same
13 model but not from a model from one company to a different
14 company. So, that's a concern I think you all need to take
15 a look at.

16 I think you all need to recognize the
17 unavailability of self rescuer and I think you are. You
18 know, with the rush on manufacturing more self rescuers,
19 there's going to be a time line. And you need to take a
20 look which I think you are on the training on the use of
21 different rescuers. I mean, if you have an SCSC or an
22 Orsanco, you know, you need to make sure everybody is
23 properly trained on the different models.

24 We need to look, and I don't know if this is right
25 on point for this proposed regulation, but we need to look

1 at protocols for mine rescue teams. I know when we had a
2 meeting to discuss this, that was a concern in light of the
3 recent tragedies that we have had. You know, some basic
4 concerns over really on who takes charge, who should be in a
5 command center, and protocols for entering the mine, and
6 then protocols for protecting the command center of the mine
7 rescue teams from decisions that were made in good faith but
8 on hind sight may prove to be an erroneous decision. You
9 know, we need to protect these people, encourage them to do
10 their job and not be Monday morning quarterbacks on them.
11 And that applies not just to the rescue team but to state
12 and federal officials that help oversee this process.

13 We feel like we need flexibilities on the
14 quarterly drills. 90 days may be too often in some
15 situations. We just, we would like to see some flexibility
16 built in there. We feel like we don't need to walk on
17 practice drills, maybe with some exceptions. And those
18 exceptions would be in certain areas on the way out whereas
19 you may need to walk and familiarize yourself with, but by
20 and large you ought to be able to ride a motorized vehicle
21 or a mantrip. And this takes into account people that may
22 not be physically able to walk it on a routine basis, but if
23 there was an emergency clearly could. We just don't want to
24 unduly burden somebody on the drills. I don't think that is
25 the intent.

1 On caches of self contained self rescuers, in
2 Kentucky I know we passed a legislation that will go into
3 effect in July concerning self contained self rescuers. We
4 allowed one provision in our state law to have caches that
5 are accessible to both the primary and secondary escape
6 ways. And I think that was touched on in the discussion
7 prior to this hearing, the use of a safe haven. I think
8 that's a prudent thing we ought to look at. What
9 constitutes a safe haven needs to be looked at further but
10 we have a state law that does allow caches to be stored
11 between the primary and secondary escape way. There is no
12 sense in purchasing SCSRs if we don't need to. I mean, this
13 is not a safety issue, this is just more practical,
14 pragmatic issue.

15 On the use of lifelines being standardized, we
16 fully agree with that. We want to make sure that every
17 lifeline should be similar, especially the cones, so
18 everybody knows exactly what the intent is, how to escape,
19 you know, what the cones mean.

20 The cost estimates on the SCSRs and the lifelines
21 that were in the preamble, when we got looking at this, we
22 realized that they were, you know, I think low-balled. And
23 I don't think this was intentional and I'm not trying to
24 point this out as a criticism but the cost is going to be
25 much, much greater than what was in the preamble. And I'm

1 not trying to say this as reflecting on safety, you know,
2 forget that, but it is going to be a bigger financial impact
3 on operators. And one of our concerns were for the small
4 operators who may not be able to pass these costs along to
5 the utilities, a small operator who doesn't have a contract
6 directly with a utility, and typically a lot of contracts
7 allow you to pass through mandated provisions in new laws
8 and regulations. So, we are concerned that a lot of the
9 small operators can't financially comply with what's being
10 required here today. We would like to see if there is any
11 effort that could be made to help ease the cost for some
12 small operators.

13 We always feel like there is always a need for
14 flexibility in the rules to accommodate new technology as
15 new technology comes along. So, when you're drafting your
16 rules or when you design your final rule, just keep in mind
17 there may be some new technology. And we don't want to
18 prevent that by an inflexible rule at this point.

19 One the 15-minute rule, we want to work to make
20 this very effective. It will take a while to get the kinks
21 out of the system, you know, where we have a toll free
22 number that we can call and make one phone call. And we
23 have that same rule in Kentucky in our state law. So, we
24 have the 15-minute rule to call the feds, a 15-minute rule
25 to call the state. We want to make sure this can be

1 coordinated as well as possible, and it will take a while to
2 get the kinks out but I think that will happen.

3 I know there has been a lot of talk over the past
4 criticizing, you know, the state and federal agencies,
5 criticizing the Bush Administration. I think the agencies
6 are doing a pretty darn good job. And in support of that
7 statement, I'd like to, I handed out a brochure that we did
8 on Safety is First in Kentucky Mines. What I did over a
9 seven-year period, I looked at the statistics on the average
10 injury and illness rate for Kentucky mines. And I got this
11 from the US Bureau of Labor Statistics off the internet, and
12 I took the years from 1996 to 2002 and just did a summary of
13 how a Kentucky coal miner ranks with other people that work
14 in the State of Kentucky.

15 And over this seven-year period, I did an average.
16 You can see how we fit in in terms of injuries and
17 illnesses, the rate. Manufacturing is 13.2. Construction,
18 9.0. Ag, forestry and fishing is 8.5. Transportation and
19 public utilities is 8.3. And then private industry as a
20 whole is 8.24. And the Kentucky coal miner fits in really a
21 shade under the average Kentucky worker coming in at 8.21.

22 I took 2003 and 2004. They were, I didn't include
23 them because they started mixing the categories. They would
24 mix some of these categories so I couldn't do apples and
25 apples. But they had the private industry average for 2004,

1 and the coal mining industry came in under the average
2 annual injury and illness rate for all Kentucky workers.

3 So, again, we've seen dramatic improvements in the
4 mines. I want to accentuate the positive. Congratulate the
5 agencies, the industry, the union, the people, all the
6 people that has had a role in bringing these accident rates
7 down. And our goal is to continue to bring these accident
8 rates down. Our goal is also to bring fatalities down.
9 Also in this brochure, you can see on the back how the
10 average number of fatalities by the coal industry ranks with
11 other categories. Again, it's much less but as we all know,
12 one fatality is too many. One fatality is unacceptable.

13 But I just want to point out that I want to
14 applaud the agencies for the good job that they're doing.
15 We're seeing some very positive trends and we want to see
16 these trends continue. And I don't see any deviations from
17 the trends. And that concludes the points I want to make.
18 We will submit written detailed comments by the end of the
19 comment period. Thank you.

20 MS. SILVEY: Okay, thank you. I have a few, I
21 guess observations first and then maybe a comment or two.
22 First of all, you mentioned the concern with using different
23 SCSRs, different manufactured SCSRs and changing from one
24 manufacturing model to another. And we've heard concerns
25 about that and, you know, I believe that is, we are working

1 on some protocols with NIOSH and that we can make the
2 protocols available to the mining public that do in fact
3 deal with training protocols, that do deal with changing
4 from one model to another, transferring from one model to
5 another in the training. And maybe Jeff can comment in more
6 detail about it. I don't exactly know where the status of
7 the protocols are now but we recognize that and we want to
8 make as much information available to the mining public and
9 provide as much assistance as we can. So, we are working on
10 that.

11 On the issue of walking the escape ways, and I
12 should say to you that we heard a lot of information on that
13 at Monday's hearing and the information from all the people
14 who testified at Monday's hearing. All segments of the
15 mining industry seem to appear to be in agreement on that
16 that in all circumstances we did need to require that the
17 escape ways be walked in their entirety under all
18 circumstances. And as I said, you can go to our website and
19 look at the transcript and see exactly what the different
20 parties said.

21 On the issue of the cost estimates, if you, and
22 I'm not asking you to do it today, but if you have more
23 specific data with respect to the Agency's estimates in the
24 ETS relative to SCSRs and lifelines, if you have more
25 specific data, would you provide that in your written

1 comments to us?

2 And those are all the comments and observations
3 that I have.

4 MR. KRAVITZ: Okay. Thank you very much for your
5 comments. I'd like to address the changing and transferring
6 from one SCSR to the next. Almost immediately after Sago,
7 MSHA and NIOSH started developing new training techniques
8 from the transferring from one SCSR to the next. And that,
9 this passing protocol or technique is being refined right
10 now. It's in the last stages of this process. We will then
11 take it to field testing and then come up with new training
12 material similar to the 3+3 Donning that is used commonly in
13 all mines right now.

14 MR. CAYLOR: Thank you.

15 MR. KRAVITZ: So, we have addressed that and we
16 intend to modify our training modules, our interactive
17 training modules and training videos that are available
18 through our academy.

19 MR. CAYLOR: Thank you.

20 MR. KRAVITZ: I had one question about the caches
21 between the primary and alternate. You said Kentucky was
22 working on standards for these right now?

23 MR. CAYLOR: Well, they haven't worked on
24 standards as yet. We had that in our law where the ability
25 to place the cache between the primary and the secondary

1 escape way is in our state law. And I think what was
2 touched on in the lead-in this morning was the term safe
3 haven. So, I think that's the concept but we have that in
4 our state law that was passed during this last session in
5 response to the Sago.

6 MR. KRAVITZ: Is anyone working on the
7 specifications for that?

8 MR. CAYLOR: At this point, no. We have created a
9 mine safety equipment review panel in Kentucky. That panel
10 could very easily look at this situation to make
11 recommendations, a panel made up similar to the panels that
12 you've seen created in West Virginia and in Washington. We
13 have our own panel, so that could easily be a topic of
14 discussion where this panel could make the recommendations
15 on what that safe haven should be.

16 MR. KRAVITZ: Thank you.

17 MR. PHAN: I have one question. I want to go back
18 to the models of SCSRs. Do you, can you provide us with
19 some kind of statistics to indicate the kind of, namely the
20 mine size that would use more than one model? And if you
21 do, I mean, this is a general question for everyone as well,
22 I mean, if you have that kind of statistics whether the mine
23 has more than one model or using one model, that would be
24 great.

25 MR. CAYLOR: That's a good point. I guess some of

1 the concern is would the operator be required to purchase
2 the same model that he currently has even though it means a
3 longer time of wait period? Then we had some concerns about
4 the manufacturers' disclaimers, you know, from going from
5 their model to a competitor's model. You know, they would
6 disclaim the effectiveness of it and that was the main
7 concern.

8 MR. SHERER: Mr. Caylor, we've put in the first
9 compliance guide that there is no requirement that the mine
10 standardize on a particular type of SCSR.

11 MR. CAYLOR: Yes.

12 MR. SHERER: That's their choice or choice not to
13 do that. We do understand that the market is somewhat
14 chaotic right now because of the situation. So, we are
15 willing to work however we can to provide oxygen to the
16 miners. And there are questions of transferring SCSRs, as
17 Jeff said, we're working with NIOSH to develop the
18 specifications and protocols, and you get into, you're a
19 lawyer, you know about the liability issues for the
20 manufacturers.

21 MR. CAYLOR: Yes.

22 MS. SILVEY: Okay. Thank you.

23 MR. CAYLOR: Thank you.

24 MS. SILVEY: At this time then, we'll hear from
25 Tony Oppegard with the Appalachian Citizens Law Center. Mr.

1 Oppegard?

2 MR. OPPEGARD: I want to thank the panel for the
3 opportunity to testify today. I had read the emergency
4 temporary standard the day it was first published, and then
5 again I read it last night. I have some specific comments
6 about it but I also will plan on submitting more detailed
7 written comments.

8 I'm representing the Appalachian Citizens Law
9 Center today which is a non-profit public interest law
10 center in Prestonsburg, Kentucky that works on coal issues.
11 Wes Addington who is the director of the mining project for
12 ACLC is also here. One of the things that ACLC does is
13 represent non-union coal miners and 105-C cases in Eastern
14 Kentucky.

15 I think it's important to point out first of all
16 that there are no union miners in Eastern Kentucky, so I
17 would agree with the comments of Mr. Oldham which I was
18 going to mention initially, too, that I really would
19 recommend that MSHA convene these hearings in coal fields
20 that are accessible to miners. You know, you all could have
21 held this hearing in Hazard or Pikeville or Prestonsburg or
22 Harlan, any place where miners would have had an opportunity
23 to attend. The reality is there probably would not have
24 been many miners attending because miners are afraid of
25 discrimination if they speak out on safety issues. And

1 that's a reality in Eastern Kentucky and has been for many
2 years. But the fact is that they should be given the
3 opportunity to attend and to speak if they choose to do so.

4 And although it's certainly not in this rule, one
5 recommendation I would make to MSHA is that you need to
6 change the reg regarding representative of miners. And I
7 represented miners back in the mid 90's who filed to become
8 the representative of miners. At that time, it was unheard
9 of in Eastern Kentucky. In fact, there were no
10 representative of miners in any mine in all of Eastern
11 Kentucky. What happened to these two miners when they got a
12 couple of miners to sign for them and were designated as
13 miner's reps is they immediately started being discriminated
14 against, and within a matter of weeks they were both
15 discharged.

16 More to the point is that what the company did,
17 when although this company had never had a miner's rep in
18 all the years of its existence, as soon as these two miners
19 became miner's reps, well, all of a sudden they had about 30
20 other people designated as miner's reps, many of whom were
21 management employees. And when MSHA went to the mine then,
22 you know, they were confronted with the problem, well, now
23 we've got 32 miner's reps. We never had one before, then
24 two miners sign up and all of a sudden we've got 30 so who
25 do we pick? You know, who travels with us? And they made

1 the determination that the first person they saw who was a
2 miner's rep would be invited to travel.

3 Well, of course that's always management because,
4 you know, the miners were underground working, management is
5 outside. And you know, they had section foremen, mine
6 foremen, other people designated as miner's reps. So, my
7 suggestion is that that reg be changed to prohibit the
8 designation of management employees as representative of
9 miners. That was not what Congress intended when the
10 representative of miners provision was included. And when
11 you read your legislative history, that's very clear. They
12 intended that to be hourly employees, because management
13 always has the right to travel with MSHA inspectors. They
14 always have the right to travel with state inspectors. If
15 you have a miner's rep traveling with inspectors, it should
16 be an hourly employee.

17 Turning to the ETS, overall I think it's, I mean,
18 when you read it I think a lot of thought went into it. I
19 think it's a thoughtful rule and I certainly applaud the
20 intention of providing greater protections to miners. I do
21 have a few problems with it which I want to go over, and
22 also tell you the things that we think are good about the
23 rule.

24 First of all, let's deal with the 15-minute
25 notification period. We applaud this provision. We think

1 it's needed. To answer Bob's question that was directed to
2 Butch about instances in which companies may forego, you
3 know, rescuing someone in order to contact MSHA, I think
4 that's a red herring, you know. I mean, let's get real
5 here. If someone, you know, is under a rock, an operator is
6 not going to say, well, I'll be back in 15 minutes because
7 I've got to call MSHA. I mean, you know it's ridiculous.

8 So, one of my jobs in addition to representing
9 miners for 18 years in 105-C cases was I was a prosecutor in
10 Kentucky prosecuting mine safety violators from April 2001
11 to May of 2005. And in those four years, I investigated a
12 lot of accidents. I mean, I was on the accident
13 investigation team interviewing miners about what had
14 happened in accidents. And we have a serious, serious
15 problem in Kentucky with failure to report accidents. You
16 all need to know that.

17 And part of the problem is because of MSHA's
18 definition of what an accident is in terms of serious
19 physical injury. The bigger problem is the company's
20 unwillingness to report an accident because sometimes they
21 don't want anybody to know, they don't want the regulatory
22 agencies to know. And I can give you two examples. One was
23 in Martin County, Kentucky where a miner was up on a power
24 poll to disconnect some connections up there and he didn't
25 know that part of that box was energized, half of it was

1 energized. And he got into high voltage and was
2 electrocuted and fell, my memory is like 25-28 feet down,
3 hit his head on a substation.

4 Well, this guy spent several weeks in a hospital
5 and that injury was not reported for several days. And the
6 guy had been taken up to West Virginia, he was in a
7 hospital. I don't even remember how MSHA found out about
8 it. But I sat in on the trial of that case. I mean, MSHA
9 cited the operator for failure to report an accident. And
10 basically the testimony of the operator was, well, yes, he
11 was knocked unconscious and, yes, he was bleeding from the
12 head, and, yes, we had to call an ambulance to come and get
13 him, but by the time the ambulance came, he was conscious
14 and asked us to call his wife and let her know he'd been in
15 accident so we didn't think it was serious. Now, this guy
16 was permanently disabled and spent weeks in a hospital and
17 that wasn't reported.

18 One case that I sat in on was in Pike County,
19 Kentucky and this was a guy who was injured in a roof fall.

20 And he was knocked unconscious. The testimony at the
21 interviews was that when he, I think they used smelling
22 salts to help him regain consciousness, but when he came to,
23 he was in great pain, he had chest pain. He had a pain in
24 his neck and his back, and if I remember correctly, I think
25 he ended up with a broken neck. But the bottom line is I

1 know he was taken to a hospital that day. The next day he
2 was life-flighted to another hospital out of state.

3 Well, that was never reported to either the state
4 or to MSHA. And an inspector at a strip mine heard about
5 it. This was an underground mine but, you know, some
6 related or company in the area, a miner mentioned, well, how
7 is that guy doing who broke his neck? And that was not
8 reported. And these are just two instances, but it is a big
9 problem.

10 The problem we ran into at that second case, and I
11 was asking questions about why didn't you report it was,
12 well, we didn't think it was a serious accident. And almost
13 without fail in these disputes, the company people would
14 always cite MSHA's reg, and that is, well, under MSHA, the
15 accident has to have a reasonable potential to cause death.

16 And that's not what the state standard is. We have a
17 stricter standard. And that's in, you know, that's in Part
18 50, it's in Section 50.2(h)(2), your definition of an injury
19 which has a reasonable potential to cause death. That's far
20 too narrow and that needs to be changed.

21 We have penalty regulations in Kentucky in which
22 we define a serious injury means an injury involving extreme
23 physical pain or the protracted impair of a function of a
24 bodily member, organ or mental faculty, or requiring medical
25 intervention greater than first aid such as surgery or

1 hospitalization. It's a little cumbersome maybe but the
2 point is if you have an injury that requires, not first aid,
3 we're not saying if someone, you know, hits their thumb with
4 a hammer, that has to be reported. But if it's something
5 that requires surgery or hospitalization, that's a serious
6 physical injury, and that should have to be reported.

7 It's a loophole that you all need to close. We
8 tried to change this on the last legislative session because
9 in Kentucky we now have a 15-minute reporting requirement,
10 too. And I should mention, the one good thing about
11 Kentucky law now is that if an injury is not reported, an
12 accident is not reported within 15 minutes, the company can
13 be fined up to \$100,000. So, we have a, I think the state
14 is taking it seriously now. That's a serious penalty.

15 The argument of the coal industry, Mr. Caylor
16 specifically, is that we need to have consistency between
17 the state and federal regulations. The fact is the coal
18 industry only wants consistency between state and federal
19 regulations when it benefits the coal industry. If it
20 doesn't benefit the coal industry, then they don't want
21 consistency. In this instance, they want consistency
22 because the federal's definition of serious injury is very
23 broad, it needs to be restricted.

24 Where we don't have consistency, for instance, is
25 in fines. And the coal industry doesn't want consistency

1 between state and federal because the maximum fine in
2 Kentucky for the first time now for any violation, even if
3 you have a 150 violations in one inspection is \$5,000. And
4 of course, MSHA's is \$60,000 and going up in the near
5 future, hopefully to 220 or higher than that.

6 One thing that's perhaps overlooked a little bit
7 in this reg in terms of the notification period, there is
8 another reason for immediate notification other than helping
9 to rescue miners or, you know, prevent further injury.
10 That's preservation of the accident scene and being able to
11 determine what caused an accident. And the fact is when
12 accidents aren't reported for two hours or six hours or
13 until the next day, when the company says, oh, well, you
14 know, now that the guy is in the hospital and we realize he
15 has a broken neck, it is a serious accident, maybe we should
16 have called you yesterday.

17 And going back to that Pike County case, the
18 company continued to mine after the guy who broke his neck
19 and went to the hospital and was life-flighted. We couldn't
20 determine whether there were any violations or exactly what
21 had happened, just the testimony of the miners that we were
22 complying with the roof control plan. It was, you know, an
23 act of God. It was unforeseeable. You know, and there was
24 no way for us to prove anything, to even look at it because
25 they had advanced, you know, a few breaks from the point of

1 the accident.

2 We had a case in Perry County, Kentucky when I was
3 general counsel where a miner was fatally electrocuted. And
4 the company disconnected all the electrical connections on
5 the section so that when our investigators got there and
6 MSHA investigators, there was no way to determine how he'd
7 been electrocuted. I mean, it was impossible for him to
8 have been electrocuted based on the accident scene as we
9 found it because everything had been changed.

10 We had another case in Knott County, Kentucky
11 where we had a miner who was running a water hose, or
12 supposed to be putting up water sprays at the discharge
13 roller on a head drive and he was stringing the water cable
14 across a moving belt line and it snagged, pulled his hand
15 in, he had a partial amputation. Well, that one wasn't
16 reported in 15 minutes. You know, it was reported that day
17 but in our accident investigation report we made the
18 determination that the accident scene had been altered
19 there. The guards had been put up along the belt line near
20 the discharge roller after the miner had lost part of his
21 hand.

22 So, that's another reason for the 15, I think that
23 the 15-minute notification requirement is a good one, that
24 we need to get both state and federal investigators to the
25 scene as quick as possible and to preserve the accident

1 scene. I also think that for the first time in this
2 legislative session in Kentucky, we now have a prohibition
3 against altering the accident scene. We had never had one
4 before. And our definition is better than MSHA's
5 definition. And I do think you have a big loophole in yours
6 that needs to be changed, and that's the part that allows
7 you to alter an accident scene to -- I'm trying to think
8 what the standard is. It says to prevent destruction of
9 mining equipment, and that's a big loophole. And you know,
10 operators can say, well, we moved that body because, you
11 know, we didn't want our continuous miner to be involved in
12 another roof fall or whatever. You know, say there's a roof
13 fall that kills a miner, you know he's dead, that body
14 should never be moved until investigators get there.

15 The only place in the world that you can move a
16 body without any repercussions that's dead is in a coal
17 mine. You know, if a guy gets killed out in Walmart or
18 anywhere else out in the public, nobody moves this body
19 until the police get there and an investigation is done.
20 But what happens in the coal mines, you have companies
21 telling miners it's disrespectful to leave this guy's body
22 underground, you know, it's disrespectful to the family and
23 there's pressure on people to move bodies although once you
24 move a body, particularly in an electrocution, it can be
25 impossible to determine what the guy was doing. And the way

1 his body falls is important, where he is located in relation
2 to electrical equipment, or in a rock fall. Was he beyond,
3 under unsupported roof? You know, was he beyond the last
4 row of bolts? A body should never be moved and you all need
5 to tighten up that reg.

6 The next part of the ETS is the frequency of the
7 SCSR training. And again, ACLC approves and applauds this
8 reg. I think the hands on training every 90 days is good.
9 It's something that should be done. Whether a miner should
10 be required to walk escape ways, I would think at least once
11 per year. I mean, I can see an argument if you're working,
12 you know, five miles underground, maybe, you know, you
13 shouldn't have to walk it four times a year. I mean, that's
14 a common sense.

15 I think it's somewhat of a red herring to say
16 requiring a miner to walk at any time could cause knee
17 injuries and back injuries. I mean, come on. You know,
18 these are coal miners. It's arduous work. It's a problem
19 if the guy can't walk out. I mean, what's he going to do in
20 the case of an emergency? And I think it's sensible and
21 reasonable to say under some circumstances you do have to
22 have to at least walk the escape ways. I understand by
23 riding you can familiarize yourself with the escape way and
24 that's fine. But I could see maybe reducing the four times
25 walking per year, but the four drills per year I think is

1 necessary.

2 And I think at least one of those miners should
3 have to walk, I don't care if they're five miles or seven
4 miles underground. It still doesn't simulate what you have
5 in an accident. I mean, you're not going to have smoke-
6 filled escape ways. You're not going to have a chaotic
7 situation where there is confusion. I think that's the
8 least that can be asked.

9 As for directional lifelines, again, I think we
10 would generally support that. I think the reg is pretty
11 good. The one problem that we would have is the same one
12 that Mr. Oldham pointed out. I think that any type of
13 lifeline should be made of fire resistant material. It
14 doesn't make any sense to me why it wouldn't be fire
15 resistant. The only thing that I have heard raised has been
16 the cost and to me that shouldn't be a factor. If an
17 operator can't afford fire resistant lifelines, he shouldn't
18 be in business. If an operator cannot afford safety
19 underground, cannot afford what's necessary to provide a
20 safe working place for miners, he shouldn't be in business,
21 period.

22 One problem I have with the entire reg that's not
23 really mentioned, you all referenced belt air several times
24 in the reg, that this testimony for the belt air reg before
25 has led to this or that conclusion. I think that the belt

1 air reg is probably the most pernicious safety regulation
2 that's ever been passed by MSHA. I really think it's
3 shameful. I think the industry or the Agency should be
4 ashamed of that regulation. There should not be any belt
5 air. You know, you all took 35 or more years of precedent
6 where Congress specifically said in the legislative history
7 why belt air should not be allowed, that it's dangerous,
8 that it can spread fires, it can propagate fires. And it
9 was totally ignored in order to save coal operators money
10 basically, so they wouldn't have to drive an extra entry to
11 ventilate their mines.

12 And I think if a fair and impartial investigation
13 is done at the Aracoma Mine, we're going to find that belt
14 air played a big role in why two miners died there or why
15 that fire spread so quickly. For Appalachian Citizens Law
16 Center, one of our priorities in the next legislative
17 session in Kentucky is to eliminate belt air, to prohibit it
18 in Kentucky. If MSHA won't do that, we're going to take
19 measures in the state to try to do that because we don't
20 want any mines in Kentucky ventilating the belt line with
21 intake air.

22 And, you know, the reason given by MSHA to allow
23 belt air, you know, that it's okay as long as you have a CO
24 monitoring system, that's a very weak rationale. You all
25 can, if you think the CO monitoring systems are a great

1 idea, you can require them on all belt lines, whether or not
2 it's used for intake air or not. I mean, require them if
3 you want to, that's fine. But I'm telling you they don't
4 always work. It did not work at Aracoma. I mean, there may
5 have been notification given, but two miners still died.
6 And no doubt that fire spread a lot more fastly than it
7 would have had that belt line not been ventilated with
8 intake air.

9 You all should be aware of a major mine fire we
10 had in Kentucky in April of 2002. And I helped
11 investigation this mine fire and, you know, did a lot of the
12 interviewing. This was at the Blue Diamond No. 77 Mine in
13 Perry County. And without going into great detail,
14 basically what happened is there was a fire on the belt
15 line. The reason for the fire was the same reason that you
16 have most belt line fires, it had been gobbled up for
17 probably a couple of weeks with all sorts of reports that it
18 needed to be shoveled and it was never shoveled, it was
19 never cleaned.

20 And they had a CO monitoring system. And the
21 testimony in that case, that fire probably raged for five
22 hours before anyone found it. We had, my memory is 26-28
23 miners working in by a raging fire for several hours. Had
24 we had an ignition source on the belt line, we would have
25 had 26 or 28 dead miners. There is no question about it.

1 And they had a CO monitoring system.

2 Well, why didn't the CO monitoring system work in
3 that case? It's because, number one, the guy who was
4 "trained" to monitor it outside had been trained for 15
5 minutes by a guy who had been trained for 15 minutes at
6 another mine. And he didn't know how to read the printout.

7 At one point, the printout read runaway, he didn't know
8 what it meant. Well, probably what it meant was that the
9 system had burned in half by this time.

10 And this guy who was monitoring it had never been
11 in an underground coal mine. I asked him, if you knew the
12 system had been burned in half and you had no telephone
13 communication, which they did not, and you had to get
14 underground to tell the miners what was going on, they
15 needed to evacuate the mine, what would you have done? He
16 said the farthest I have ever been in the mine is the bottom
17 of the elevator shaft. I had no idea where they were
18 working. I could not have done it.

19 In that case, although you had a mine fire raging
20 for several hours, they sent another crew underground to
21 work, not knowing that the mine was on fire. When those
22 guys got to their workstations, they saw tools spread all
23 over the place and they realized something was wrong. And
24 they went hunting for the other crew and found them fighting
25 the mine fire. And at some point, MSHA and the state were

1 notified. That fire was so out of control that the mine had
2 to be sealed that day. They could not put it out. And it
3 didn't reopen for, I think it was like 17 months. I think
4 it opened in July of 2003.

5 And they had a CO monitoring system. It didn't
6 work. And had there been belt air in that case, we probably
7 would have had a bunch of miners who would have been killed.

8 Fortunately, they did not ventilate the belt line with
9 intake air.

10 With regard to the SCSRs, I think there are some
11 really good provisions in this reg, but there is one
12 provision that troubles me greatly. To require an
13 additional SCSR so that there's two for every miner, that's
14 a very positive thing. I think it's very positive to
15 require the SCSRs on mantrips. The explanation for that
16 made great sense. The problem that we have with the SCSR
17 plan is the outby storage plan. I think it's not well
18 thought out. It also caused us problems in Kentucky frankly
19 because we had what was called House Bill 503 which would
20 have been much better than what MSHA has in this emergency
21 temporary standard.

22 House Bill 503 in Kentucky which Representative
23 Brent Yonts sponsored would have required caches of SCSRs in
24 the primary and secondary escape ways at every 1,250 feet if
25 the seam was 48 inches or less. If the seam was above 48

1 inches, they would have been required every 2,500 feet. So,
2 I think you asked a question in your ETS about if we don't
3 have this performance based standard which I really do not
4 agree with at all. No offense, Jeff, I think that was your
5 name there.

6 But it's inconceivable to me that small operators
7 in Eastern Kentucky are going to try to go through that
8 exercise. I mean, frankly I didn't really understand it
9 reading it. I mean, we have some operators who still think
10 reflective signs in escape way, you can hang pop cans in
11 there. I mean, you know, that may be a rare circumstance
12 but I just can't see operators going through this and doing
13 it three times and averaging and all that. I just don't
14 think that's workable.

15 I think what you need to do is have a fixed
16 standard of where SCSRs have to be at what distances. I
17 don't think what Mr. Caylor about the, you know, we have a
18 term accessible, we do in the new Kentucky law. That's a
19 bad part of our law. If you think you can put SCSRs between
20 escape ways, to me it's just an effort to avoid cost. It's
21 nothing that enhances safety. They should be in the escape
22 ways.

23 If I understand the outby storage plan, and I've
24 read it twice now, if I understand it correctly, it may not
25 be required in all cases. Is that true? I mean, I think it

1 should be required in all cases. I think that you should
2 have SCSRs stored in the primary and secondary escape way in
3 all mines unless, I mean, if you're only underground 500
4 feet, obviously no. But if you're underground a certain
5 distance, I think you should have them both escape ways at
6 designated intervals.

7 And I think the problem frankly with me, I mean,
8 you emphasize the need for flexibility, I don't think
9 operators ought to have flexibility in this. I think it
10 ought to be designated. I think they should be 1,250 feet,
11 every 1,250 feet if it's 48 inches or less, and every 2,500
12 feet if it's above 48 inches, the coal seam, that is. And I
13 think if an operator wants something different, they should
14 have to go through the petition for modification and ask for
15 a variance.

16 Frankly, at this point, there's a lot of industry
17 executives running MSHA. I don't trust them in terms of
18 flexibility approving plans that are mine specific. I
19 understand the reason for it, I just don't think it's a good
20 idea. Most standards are fixed standards and if you want to
21 deviate from it, you file a petition for modification.
22 That's what we believe should be done in this case.

23 One final point, you know, Mr. Caylor was talking
24 about, you know, the excellent safety record that we have in
25 Kentucky and how safe mining is. The fact is that, as

1 everybody knows, we've had 26 deaths in coal mines this year
2 already in the United States. We're not even a third of the
3 way through the year. We've had five in Kentucky already.
4 Last year, we had six. In 2004, we had eight. So, you
5 know, our rate is real high at this point.

6 The one thing that most people don't talk about
7 that needs to be remembered is we shouldn't just be looking
8 at fatalities. We should be looking at injuries as well.
9 And in Kentucky, in 2004 and 2005, we had 35 serious non-
10 fatal injuries. And MSHA doesn't do accident reports for
11 anything other than fatalities ordinarily. In Kentucky, we
12 do them for serious non-fatal injuries.

13 And of those 35 serious non-fatal injuries in the
14 two previous years, the vast majority of those were
15 permanently disabling. And we have guys with brain damage,
16 amputations, you know. Most of these guys, probably at
17 least 80 percent of them will never go back to work again
18 and the consequences on their lives are extremely
19 significant. In a lot cases, you could argue almost as bad
20 as being killed.

21 Everybody knows that we had two miners killed last
22 week. We had a miner killed Thursday in Pike County in a
23 pillar section. We had a miner killed Friday in Harlan
24 County who got caught between a bridge conveyor and a low --
25 structure. But what most people don't know is we also had a

1 miner who had a leg amputated on Monday because, you know,
2 that doesn't get the attention. That's a serious non-fatal
3 accident and this was in Harlan County also. Fortunately,
4 he survived but he lost a leg. You know, the last fatality
5 we had last year in Kentucky H&D Mining, we had a miner who
6 was run over by a ramp car and had his legs severed and he
7 bled to death, and he never should have died. But the MET
8 who was designated for that section didn't treat him and he
9 lost so much blood, by the time he got to the hospital he
10 had perished.

11 I'd be glad to try to answer any questions. I
12 appreciate the opportunity and we will submit more extensive
13 written comments.

14 MS. SILVEY: Thank you. With respect to your
15 testimony about the serious problem with failure to report
16 accidents in Kentucky, and you gave several specific
17 examples, but as an MSHA representative that concerns me.
18 So, and as I said, you did provide several examples, but if
19 you have examples of serious problems with failure to report
20 accidents in Kentucky and you have the data on that that
21 have not been reported to MSHA, I'd like for you to -- you
22 know, obviously you don't have to do it today but I'd like
23 you to provide that to us.

24 MR. OPPEGARD: Actually, I think, you know, the
25 incidences I provided, MSHA people and the districts would

1 be aware of them. For instance, the Pike County case, there
2 was MSHA investigators at the interviews, too.

3 MS. SILVEY: Right. And you did, you said a
4 citation had been issued in that case. And maybe I should
5 modify that a little. If you have instances in which the
6 MSHA are unaware in the field, if you would provide that to
7 us, we would appreciate that.

8 On the SCSR outby storage plan, because you had
9 some concerns about that, and I understand your comment that
10 your preference is for a specification oriented standard
11 because we got a comment on that in Denver also. And as you
12 stated, in my opening statement, I did ask, I restated some
13 of the things we said in the ETS and the fact that we are
14 looking for comment and testimony from everybody in the
15 mining public as to how best we can provide protection for
16 people in the outby areas.

17 And then, my last point is, we, too, are quite
18 concerned about, oftentimes, you know, we focus a lot on
19 fatalities and we obviously, everybody knows that, we count
20 fatalities. But we are just as concerned about serious
21 injuries, accidents. And I'm immediately coming to the
22 standards office for metal/non-metal and I can speak there.

23 I'm going to let Eric speak for coal. I mean, I can speak
24 for coal, too, but I'm going to let him do it.

25 But in metal/non-metal, we generally, and you

1 know, you never say you did something in every instance and
2 I won't say that, but generally we did accident reports when
3 we had a serious injury in metal/non-metal because clearly
4 there are lessons to be learned from serious injuries just
5 as much as fatalities. Oftentimes, the lesson to be learned
6 can prevent a future fatality. So, we tried in metal/non-
7 metal to do accident reports for serious injuries.

8 MR. OPPEGARD: Well, I was speaking about coal.
9 And of those 35 in Kentucky, I don't know that there was any
10 done, you know, MSHA did reports on any of those. One
11 clarification about that outby storage plan, my reading of
12 the reg, the outby storage plan isn't just to protect outby
13 workers, and I don't think it should be. I mean, my
14 thought --

15 MS. SILVEY: And it's not. It's not just to
16 protect outby.

17 MR. OPPEGARD: Right.

18 MS. SILVEY: It's anybody passing through that
19 area. It's not --

20 MR. SHERER: It's for everybody in by that
21 location.

22 MS. SILVEY: Yes.

23 MR. OPPEGARD: And I think the importance of
24 having them in the escape ways is that there may be
25 instances and the, you know, the confusion and the chaos

1 where even if they have two SCSRs, that they may not be able
2 to get to them. You know, they may start running down an
3 escape way, but it's nice to know, or maybe they have one
4 and can't get to the other one because of an explosion, for
5 instance. And it would be nice for them to know, well, if I
6 can make 1,250 feet, there's a whole another cache of SCSRs
7 there.

8 You know, I know I have an hour, I think what you
9 have now, you have people who know they have an hour of
10 oxygen. For instance, in Sago, they probably could have
11 come out of that mine. But let's say, you know, they didn't
12 know that. They didn't know the conditions between the
13 point of the explosion and the surface because there was no
14 communication. Had they had communication, they probably
15 could have been told, you know, you guys can don your SCSRs
16 and you can walk out. It's not blocked, you can come on
17 out.

18 But obviously, you all know this, but the, you
19 know, the situation that they're faced with or miners may be
20 faced with anywhere is what if I crawl or, you know, what if
21 I walk and I get to a certain point, you know, I got 2,000
22 feet or 2,500 feet and then I find my egresses blocked and I
23 can't get out of the mine? And I have to head back in and
24 barricade and I'll have used my hour's worth of oxygen. It
25 would be nice for people to know, if I can make it a certain

1 distance there's going to be another cache of SCSRs there.

2 I can get a fresh supply of oxygen and I don't have to worry
3 about rationing my oxygen or just, you know, trying to
4 conserve it for the long run.

5 MS. SILVEY: Did you want to talk about the
6 reports?

7 MR. SHERER: Yes, I'll say some of those. First
8 of all, Mr. Oppegard, we basically agree with you that there
9 does need to be sufficient oxygen for everybody to be able
10 to exit the mine safely. And that was the intent of the
11 ETS.

12 Are you aware of any scientific study or research
13 for the 1,250 and 2,500 feet that you mentioned?

14 MR. OPPEGARD: No.

15 MR. SHERER: Okay. Coal tries to investigate all
16 serious accidents. And there are some that we miss for
17 various reasons. They're required that all accidents be
18 reported. Immediate reporting I think is the issue. Do you
19 have any further comments on that?

20 MR. OPPEGARD: Yes, I'm talking about doing
21 accident investigation reports. MSHA does not do accident
22 investigation reports for most serious non-fatal accidents.
23 I mean, they are few and far between. So, I mean, MSHA is
24 going to sit in on those interviews ordinarily, but are they
25 going to do a report? No.

1 MR. SHERER: I'm unaware that there is a great
2 deficit. Do you have any information on that?

3 MR. OPPEGARD: Well, I think you can go back and
4 get the Kentucky reports from 2004-2005, there's going to be
5 about 35 of them and I'd be willing to bet that there's very
6 few if any MSHA reports on those same accidents.

7 MR. SHERER: Have you tried to access those
8 reports?

9 MR. OPPEGARD: Yes, I have. I mean --

10 MR. SHERER: If you've got any specifics, we would
11 appreciate it.

12 MR. OPPEGARD: Well, I don't know how I can give
13 you any more specifics other than, you know, check with the
14 serious non-fatal reports in Kentucky and get those names
15 and mine numbers and, you know, see if you have reports for
16 them.

17 MS. SILVEY: Okay, we understand.

18 MR. SHERER: We'll check into that. Thank you.

19 MR. KRAVITZ: You asked a question about outby
20 caches, whether or not we'd require them for all mines. You
21 know, basically, you know, the ETS states that if you can
22 get out of the mine within one hour from your working place,
23 then you wouldn't need a cache. That's why we asked the
24 question for recommendation for specification standards
25 which you have given us. Hopefully that answered your

1 question. But the rationale for the two SCSRs is basically
2 it would give that person two hours of oxygen out of a mine
3 that would take one hour to walk out of. So, it seems like
4 doubling that would take care of that person but I can see
5 your perspective also.

6 MR. OPPEGARD: Well, I think the point is, and I
7 understood reading it what the rationale was, but what if
8 for some reason the SCSR doesn't work? You know, as you
9 know, I mean, when I worked for MSHA for two and a half
10 years, we had all sorts of problems with SCSRs. I mean, it
11 was considered a crisis at one point, you know, the shake
12 test and all of that. You know, we had a lot of them that
13 weren't working, a lot of them are old. You know, we've got
14 SCSRs out there that are 30 years old that some mines rely
15 on, I believe.

16 MR. KRAVITZ: No.

17 MR. OPPEGARD: Okay. But I think the point is
18 that there may be instances where a miner is not going to
19 have access to them even though he's supposed to have two.
20 What if he's at a point in the mine he doesn't have it with
21 him, or you know, or the one that he does have, you know,
22 doesn't work?

23 MS. SILVEY: I think we understand. Okay.

24 MR. OPPEGARD: Thanks.

25 MS. SILVEY: Thank you.

1 MR. KRAVITZ: Thank you.

2 MS. SILVEY: Our next speaker will be Mark Watson
3 with Alliance Coal. Mr. Watson?

4 MR. WATSON: I'm Mark Watson with Alliance Coal.
5 Thank you for the opportunity to present our initial
6 comments on the ETS and the proposed mandatory standard.
7 We'll be filing more detailed comments for the rule making
8 record, but we believe it would be helpful for you to have
9 the benefit of our initial thoughts on a couple of issues
10 and questions.

11 Our main concern and request is that it's vitally
12 important that any standards approved by MSHA maintain the
13 performance based approach that the ETS embodies. As the
14 ETS explains in Section 75.1714-4(c), and I quote, "It gives
15 mine operators flexibility in determining the location,
16 quantity and type of additional SCSRs stored in primary and
17 alternate escape ways. And its requirements are performance
18 oriented. It allows mine operators to assess the conditions
19 unique to their mine and to establish SCSR storage locations
20 based on these conditions. These principals allow mine
21 operators to fashion SCSR deployment strategies so it can
22 best facilitate a successful escape for their miners under
23 their own mine conditions and configurations."

24 There are two examples I'd like to focus on today
25 where this is critically important. First, we believe that

1 the ETS does, and the final mandatory standard should, allow
2 a mine operator to employ safe havens or protected transfer
3 stations for SCSR storage between adjacent primary and
4 alternate escape ways and elsewhere. A protected transfer
5 station which I'll refer to as PTS is a strategically
6 located and especially designed facility built to protect
7 stored devices and enhance the likelihood of conditions that
8 would facilitate a successful SCSR change-out procedure such
9 as the preservation of irrespirable atmosphere.

10 Our experience tells us that these circumstances
11 can make all the difference when escape way has become
12 contaminated in the aftermath of a fire or explosion. For
13 most applications, the PTS would be located in a crosscut
14 and constructed of two protected walls designed to meet the
15 same specifications for explosion resistance as permanent
16 seals. Each wall would contain an access door designed to
17 withstand explosive forces up to 20 PSI. Lifelines will be
18 connected to each door to help facilitate the location of
19 the PTS and the escape way during an escape through dense
20 smoke.

21 In addition to the stored SCSRs, the PTS would
22 contain communication equipment, electronic atmospheric
23 monitoring devices, first aid supplies, food, water and
24 other supplies that are deemed critical. It is critical to
25 provide each miner with the tools necessary for safe

1 evacuation in an emergency. It is also critical that those
2 tools be protected so that they would be available for years
3 and in good condition when needed. A PTS will provide the
4 protection for SCSRs and other supplies.

5 Any incident requiring the donning of SCSRs in the
6 evacuation of the mine will be both physically and mentally
7 stressful for the miner. As we have discussed the PTS
8 concept with our employees, we have learned that the
9 location of a PTS during an escape will bring confidence to
10 evacuating miners. Our coal miners have given feedback that
11 it would be motivating for them to push to reach a protected
12 transfer station where they would be able to transfer SCSRs
13 and compose themselves for the next lag of the evacuation.
14 As mentioned in the ETS, confidence is a major factor
15 contributing to the success of a mine evacuation and
16 survival in an emergency situation.

17 In addition to allowing the construction of
18 protected transfer stations, we believe the ETS does, and
19 the final mandatory should, allow a mine operator the
20 flexibility to store SCSRs at appropriate locations as
21 determined by a functional testing of the specific SCSR
22 devices that are to be stored. We have performed extensive
23 functional testing of different SCSRs that are currently
24 approved by MSHA and NIOSH as one-hour devices. Through
25 this effort, we have documented that there are significant

1 performance differences between specific models of SCSRs
2 that should be considered when determining where these SCSRs
3 are to be stored in the mine.

4 MSHA has specifically solicited comments on
5 whether a specification standard would be more appropriate
6 than a performance oriented method of determining storage
7 and location of SCSRs. We believe that a performance
8 oriented approach when consistent with the intent of the ETS
9 is most appropriate and promises to maximize the safety
10 benefits of our emergency preparedness investments in new
11 SCSRs. Furthermore, we believe these principals are
12 fundamentally important for encouraging new technology that
13 will enhance mine evacuation. Rigid specifications for
14 SCSRs as to types, locations and quantities would hinder
15 advanced SCSR development efforts and discourage the
16 introduction of creative evacuation and escape strategies.

17 We want to make certain a miner has what he needs
18 to escape in an emergency. The Agency must continue to
19 provide a flexible, practical and lifesaving bottom line.
20 Thank you.

21 MS. SILVEY: Thank you. On your comment with
22 respect to PTS, protected transfer station, and you provided
23 in your testimony certain specifications, so I take it that
24 you are using those in your mine? Or are you, maybe I
25 should ask that instead of --

1 MR. WATSON: We're currently in the process of
2 constructing those in our mines and evaluating the specific
3 design requirements. We're working cooperatively with MSHA
4 on that effort.

5 MS. SILVEY: Well, see, then my question was going
6 to be do you have any experience with them. So, you're in
7 the process of putting them in now?

8 MR. WATSON: Yes, that's correct.

9 MS. SILVEY: When is this process going to be
10 completed? Or when is your time table for it being --

11 MR. WATSON: We constructed part of a station last
12 week and we're doing some preliminary evaluation as to the
13 seal and according environment that will be contained within
14 the PTS. To state in the exact time line, I'm unsure.
15 We're trying to get this accomplished as quickly as possible
16 in order to have it available or to comply with the ETS.

17 MS. SILVEY: Well, the next thing I was going to
18 say then, any information that you have on it and how it
19 works or any evaluation results, so long as they aren't
20 proprietary, I'm not asking you for any, if you can submit
21 that to us before the record closes on the 30th of May, we
22 would appreciate that.

23 MR. WATSON: Yes, we'll be following with more
24 detailed comments addressing all of the issues. I just felt
25 that it was important to get on the record today to discuss

1 what we were doing.

2 MS. SILVEY: I understand. Okay.

3 MR. SHERER: Mr. Watson, was there any experience
4 with this sort of installation prior to this ETS?

5 MR. WATSON: No. No, we are experienced with the
6 caching and storage of SCSRs but this is a concept that we
7 came up with to safely comply and be most effective in our
8 compliance with the ETS.

9 MS. SILVEY: Well, any specifics you have on it,
10 if you can, whatever specifics you can make it, as I said
11 you stated some but with respect to construction
12 requirements, specifications and your evaluation of it, then
13 we would appreciate that.

14 MR. WATSON: Yes, I expect that we will have a lot
15 more information by the end of May in our final submission.

16 MS. SILVEY: Okay.

17 MR. KRAVITZ: I guess I've got one basically. How
18 do you ventilate these PTSSs?

19 MR. WATSON: We propose to ventilate them by
20 installing atmospheric detection system and essentially open
21 the doors as they're adjacent to an intake escape way. We
22 would perform testing to determine basically the length of
23 time that it would take for the room to get bad air and then
24 we'd establish a standard procedure for essentially someone
25 going by and opening the doors to ventilate the room.

1 MR. KRAVITZ: Did you consider using a borehole --

2 MR. WATSON: Yes, we have considered using a
3 borehole. As you are aware, it might not be practical in
4 all applications. In some applications, it could be. And
5 it's definitely, we obviously understand the benefits that a
6 borehole could bring to this application and we will
7 consider it.

8 MR. KRAVITZ: And one final, how many people would
9 such a PTS accommodate?

10 MR. WATSON: At our largest mine, we'll be
11 required to store in excess of 200 SCSR devices in that
12 particular location. It's not designed as a rescue chamber
13 and that was the reason for using a different term to
14 describe it. It's not a rescue chamber. We're not
15 encouraging barricading. We simply want to protect our SCSR
16 cache and allow for a better chance for a clean environment
17 to transfer SCSR devices in.

18 MS. SILVEY: Okay. Anybody else?

19 MR. SHERER: I'm a bit at a loss as to why a
20 borehole, in particular, a borehole and maybe a piping
21 system couldn't be used to reach almost any area of any
22 underground mine.

23 MR. WATSON: Oh, yes. Some issues where we don't
24 control the property, we may not be able to get a borehole,
25 particularly in Central Appalachia. A piping system could

1 be effective. Again, one of the keys to the concept is that
2 we're protecting the cache from an explosion or a fire. A
3 piping system is something that would be hard to protect if
4 you had to pipe at a lengthy distance in order to get to it.

5 MR. SHERER: Are you aware of any testing of
6 piping systems? I don't understand why it would be hard to
7 protect a suitable --

8 MR. WATSON: No. No, I mean, it's preliminary in
9 our design and we'll be working cooperatively with MSHA in
10 working out the details of all this stuff. So, I'm sure
11 that's something that will be looked into in more detail.

12 MS. JANES: Would your 1502-C -- would they also
13 include accessing those caches? And how ventilation may be
14 changed if you open one door or the other in either escape
15 way?

16 MR. WATSON: Yes, I would assume that would be
17 appropriate, of course.

18 MS. JANES: But do you foresee, like you haven't
19 written those training programs or anything yet since this
20 is all under development?

21 MR. WATSON: Correct. That's correct.

22 MS. SILVEY: Thank you.

23 MR. WATSON: Thank you.

24 MS. SILVEY: I think that maybe we should take a
25 ten-minute break now. So, if we could take a ten-minute

1 break and be back in ten minutes please, I appreciate that.

2 (Short recess.)

3 MS. SILVEY: Okay. We will now reconvene MSHA's
4 public hearing on the emergency temporary standard on mine
5 evacuation. Our next speaker will be Dick Vandeville with
6 Orsanco.

7 MR. VANDEVILLE: No, I just signed. I must have
8 signed the wrong one.

9 MS. SILVEY: Oh, yes. Okay, that's fine. That's
10 why I'm the --

11 Then, next we will have Pearl Farler with Bledsoe
12 Coal Corporation. Oh, excuse me. Before we start with you,
13 Mr. Farley, is Dan Morgan here? Oh, okay.

14 MR. FARLER: Hello, my name is Pearl Farler and
15 I've been in the mining industry for 27 years. Presently,
16 I'm the Safety Director for Bledsoe Coal Corporation which
17 is a subsidiary of James River Coal. On behalf of myself
18 and my company, I want to extend our deepest sympathy to the
19 families of the miners who have died this year in our coal
20 mines.

21 I've been involved in mine rescue for over 25
22 years. And currently, I am the mine rescue team captain of
23 the James River Mine Rescue Team. During my 25 years
24 involvement in mine rescue, our teams have participated in
25 two actual firefighting activities. Also, I am proud to say

1 that I have been a member of five national mine rescue team
2 contest championship teams.

3 We as coal miners all know that we have a
4 dangerous job. But I don't think there's one of us that
5 would do anything else. I'm proud to be a coal miner. We
6 are not dumb people. We're coal miners. We're highly
7 skilled people.

8 Now, in light of our recent occurrences, we must
9 take steps to protect our miners, to further protect our
10 miners. MSHA, state and the coal industry must work
11 together to promote safety in our coal mines. The emergency
12 mine evacuation rules have made great strides in this area.

13 However, we must not intentionally cause hardships to our
14 miners. MSHA has requested comments on the use of
15 mechanized equipment during evacuation drills. It is our
16 opinion that it would be a hardship to require that all
17 miners walk the escape way the entire escape way every 90
18 days. One of our mines is over seven miles deep, and the
19 average height being from 48 to 60 inches. I do not want
20 our miners to go into that mine, work their entire shift,
21 and then have to walk or crawl the seven miles from the face
22 to the surface.

23 Let's look at being able to transport our miners
24 on equipment to comply with this provision. There is a big
25 difference between crawling that distance in a fire drill

1 and exiting the mine in an actual emergency. The main
2 objective is for the miners to know the escape route, be
3 familiar with the positioning of the lifeline and know where
4 the SCSRs are stored. This can be achieved by stopping at
5 the appropriate locations while riding in mechanized
6 equipment.

7 MSHA has also requested comments on the distance
8 between the self contained self rescuers storage caches.
9 The question is do we use a performance based standard or do
10 we use a specific objective standard? We recommend that
11 MSHA use the existing five-minute travel distance table and
12 use the multiplier of 9 instead of 12. This multiplier
13 would estimate how far a person would be able to travel in
14 45 minutes which would allow for a cushion of 15 minutes due
15 to fatigue and the wearing of the rescuer. The distances
16 are based on the average mining height in the escape ways
17 beginning at the portals. This would provide for uniformity
18 throughout the mining industry.

19 As a company, we are in favor of the revisions
20 outlined in the emergency mine evacuation rule. However,
21 there are areas besides the one I have mentioned that must
22 be resolved. We now must work together to iron out the
23 details of the rules and use the common sense approach to
24 properly protect our miners. Thank you very much.

25 MS. SILVEY: Thank you. With respect to your

1 comment on walking during training, in training drills, and
2 you stated about stopping at appropriate locations while
3 riding mechanized equipment, should the miners -- is it your
4 position that the miners during all of the drills, all four
5 drills a year, is it your position that the miners can ride
6 during all of those drills and just stop at the appropriate
7 locations?

8 MR. FARLER: Our position is just that, if that
9 miner has worked there over a period of time. Now, a new
10 miner that we just hired at the mines, yes, we need to take
11 him over those escape ways, let him become familiar with
12 them by walking him.

13 MS. SILVEY: By walking, okay.

14 MR. FARLER: And then, after that, let's put him
15 on equipment. Let's avoid these knee problems and back
16 problems and things like that because our people, some of
17 them are getting a little bit up in age and we need to take
18 care of them. It's a different thing if the mine is having
19 a problem. They will evacuate.

20 MS. SILVEY: Okay, that answers my question.
21 Anybody else have --

22 MR. SHERER: I do. Are you able to ride both of
23 your escape ways?

24 MR. FARLER: Yes, sir. There's only certain areas
25 that we will not be able to get through right now. But I

1 think we can rehabilitate those areas to where we can get
2 down through those areas with mechanized units. Yes, sir.

3 MR. SHERER: Thank you.

4 MS. JANES: I have a question. During an escape,
5 do you envision the miners trying to ride out in smoke or
6 are they going to walk out? Because that can cause --

7 MR. FARLER: I talked with a lot of people at the
8 mines, a lot of them tell me that if there's a way to ride,
9 they're going to ride. A lot of them tell me if the belt
10 line is running, they'll be on the belt line. Now, I don't
11 blame them. I mean, if I could get out of that coal mine by
12 riding that belt line, I'm sorry, I'm going to ride that
13 belt line if there is something wrong in that mine if I can
14 see and if the conditions allow me to do that. But if
15 they're not, they're going to have to go the way they know
16 how.

17 MS. JANES: Okay. So, it's your opinion that
18 riding gives the same sensation and whatnot as walking to
19 get to familiarize yourself --

20 MR. FARLER: No, it does not. It does not. No,
21 it does not but it gives you the same direction. You can
22 point out the location of the lifeline. You can stop and
23 show them the locations of the SCSRs. Everything that we
24 need them to be able to identify, we'd be able to do that
25 with the mechanized units.

1 MS. SILVEY: Anybody? Okay. Thank you.

2 MR. FARLER: You're welcome.

3 MS. SILVEY: Our next speaker will be Ken Russell
4 with Jim Walter Resources.

5 MR. RUSSELL: Thank you, Ms. Silvey and the panel
6 for allowing us to make comments here before you today. We
7 will be adding some additional comments before the May
8 ending period.

9 The employees of -- sorry, I'm Ken Russell, Jim
10 Walter Resources. The employees of Jim Walter Resources
11 understand the effect of a mine disaster, and our heartfelt
12 thoughts and prayers are with those affected by these events
13 this year. In 2001, we experienced a disaster at our No. 5
14 mine that took the lives of 13 of our friends and coworkers.

15 Living through our disaster further substantiates our
16 answers in certain aspects of this latest emergency
17 temporary standard.

18 Part 50 Notification. When dealing with a mine
19 emergency, early notification is essential to both state and
20 federal agencies. But does MSHA really want mine site's
21 responsible person to be distracted from the importance of
22 managing an emergency scene to make a call that could result
23 in losing precious minutes? The ETS requires operators to
24 notify MSHA immediately at once to within a 15-minute
25 maximum of a 30 CFR Part 50-2(h) accident. It is MSHA's

1 belief that early notification will enhance appropriate
2 emergency response. However, when faced with a serious
3 event, operators cannot rely on MSHA to manage the scene
4 from a remote location during the first minutes of their
5 mine emergency.

6 Operators should be allowed to manage their event
7 until it is controllable or the need for additional support
8 is identified. During these early stages, the 15-minute
9 requirement can be intrusive and actually impair critical
10 emergency management. MSHA's strengths are in second and
11 third-tier response such as NEUs, chromatograph specialists,
12 ventilation control, roof control, electrical, experts in
13 the fields.

14 We recommend that the 15-minute notification
15 period required by this ETS be revised to allow flexibility
16 for the operator to manage situations involving serious
17 injuries, entrapment and other related injuries that require
18 undivided attention in the early stages of response. In
19 contrast, we support immediate notification for fatalities
20 and accidents with the potential or requiring a mine rescue
21 and/or recovery response.

22 As stated earlier, the time required to comply
23 with immediate notification has the potential to become even
24 more intrusive. Per this ETS, an operator is obligated to
25 contact their district office when reporting a 30 CFR Part

1 50 accident. If the district office is unavailable, this
2 ETS directs the operator to continue trying to make contact
3 by following all prompts from their answering machine
4 services. If unsuccessful in contacting the local MSHA
5 district office, this ETS continues by requiring operators
6 to use an alternate number for contacting MSHA headquarters'
7 800 toll free line. This line has a 24-hour, seven-day per
8 week answering protocol.

9 I was a part of a test recently at Jim Walters
10 safety department where we called the MSHA headquarters' 800
11 toll free line to test the procedures and discuss the
12 information needed to train our responsible persons. After
13 several rings, our call was answered and we were promptly
14 asked to hold. After nearly two minutes, the operator again
15 answered and placed us on hold for a second time. Later,
16 when she returned, she asked for our complaint. We
17 explained that we had no complaint, just wanted to learn
18 more about the emergency call line protocols.

19 We were informed that the person we needed was at
20 lunch. She then offered to send them an email with my
21 request which included a return request as soon as possible.

22 The original call was made at 11:40 a.m., Central Standard
23 Time, and we received a return call from our district
24 manager at 3:05 p.m. During mine emergency situations where
25 time is of the essence, a system such as it was will not

1 work.

2 We recommend that MSHA develop a universal call
3 system to be used by all MSHA district offices. To prevent
4 unnecessary delay for after business hours calls, the system
5 should be equipped with automatic rollover to the MSHA
6 headquarters' 800 toll free line. We further recommend that
7 district offices and MSHA headquarters' 800 toll free line
8 receiving the emergency calls be adequately staffed with
9 persons trying to meet the intent of the service.

10 Were delays in emergency response prior to this
11 ETS a failure of the existing regulations? We believe that
12 requirements listed in 30 CFR Part 49 are clear. Rescue
13 stations and teams are required to be within two hours of
14 the mine they are responsible for. The Agency's attempt to
15 enhance response by requiring more prompt notification will
16 not change response to an emergency if a mine rescue team
17 fails to respond in a timely manner. This requirement is
18 the same for in-house and contracted mine rescue teams. It
19 is the responsibility of the Agency, operators, and team
20 members to ensure compliance with this regulation.

21 MSHA can best serve our miners by evaluating each
22 operator's emergency capabilities in facilitating through
23 enforcement when necessary the development of appropriate
24 procedures to meet today's existing standards. If mine
25 rescue team response time issues were in part responsible

1 for generating this ETS, then that particular aspect of the
2 regulation should be explored. If delayed mine rescue
3 response is specific to contract mine rescue teams or their
4 availability, then MSHA should consider additional
5 requirements for operators dependent on contracted mine
6 rescue services.

7 MSHA has asked for comments on whether a revision
8 should be made to cover all unplanned underground mine fires
9 or unplanned underground mine fires of particular types. We
10 do not support this position and believe that the definition
11 of accident as related to Part 50 is adequate to ensure the
12 safety of miners.

13 Lifelines, we support the use of lifelines
14 installed in both the primary and secondary escape ways.
15 However, when developing future recommendations, we request
16 that the Agency consider potential hazards associated with
17 installation of lifelines in entries where track-mounted or
18 mobile equipment is operated. 500 feet of the loading point
19 in the primary escape way is where we feel it should start.

20 It would be intrusive and create hazards on advancing
21 sections and retreating sections for mobile equipment, for
22 supply holes, for chargers, for power centers, and we need
23 that to be considered in this standard to be 500 feet out by
24 the working face in the primary escape way only.

25 Tethers, we believe that tethers should be

1 provided and miners trained to make an informed decision as
2 to how and if they should be used. Since evacuation can be
3 affected by conditions of the emergency, the use of tethers
4 should not be mandatory.

5 75.1502, mine emergency evacuation and
6 firefighting program of instruction, under this ETS, we
7 recommend that 75.1502 be changed from a 90-day training
8 requirement to a quarterly requirement. Quarterly training
9 provides operators the flexibility to maximize the training
10 of miners in emergency evacuation as well as to train miners
11 in a more timely manner if they missed their scheduled
12 drill. Quality training over quantity. And the flexibility
13 of the quarterly training instead of the rigid 90-day
14 training is a request.

15 The new paragraph 75.1502(c)(2) is added to
16 enhance mine evacuation. We disagree with the Agency's
17 position that all people must travel the entire escape way
18 every 90 days as part of the training requirement. This is
19 not training as the term is defined. Physically traveling
20 an entry does not train a person on escape.

21 Under the new ETS, operators must establish
22 continuous lifelines throughout both primary and secondary
23 escape ways. It would be more logical to train miners on
24 escape ways as to the entrances from their workstations,
25 physically locating the lifeline system, SCSR locations and

1 physical issues in the escape ways. This would have the
2 same effect upon training and education. Furthermore, the
3 six-week escape way walk is still mandated requiring two
4 miners and a supervisor to walk the escape way in its
5 entirety.

6 Additional concerns with travel of escape ways by
7 all employees are the physical condition of miners traveling
8 the escape way. Jim Walter Resources has an aging workforce
9 whose average age is in the early 50's. Requiring miners to
10 walk escape ways would cause undue stress upon
11 cardiovascular system or increase the risk for personal
12 injuries.

13 Fire drills, the ETS is concerned with the quality
14 of fire drills and the efficiency of miners' ability to
15 fight fires. This ETS eliminates the opportunity for
16 underground miners to practice firefighting skills on actual
17 fires. We believe that underground mine firefighting can be
18 enhanced if this ETS would give credit for at least one
19 firefighting drill per year to be conducted on the surface
20 of a coal mine where miners could actually fight fire with
21 firefighting equipment. The requirement for conducting
22 underground fire drills in this ETS eliminates the ability
23 for actual hands-on firefighting in an underground setting.

24 75.1714(4)(c), MSHA has rejected a request to
25 design SCSR storage sites that can be accessed from either

1 the primary or secondary escape ways when located in
2 parallel entries. We believe allowing access to cached
3 SCSRs from either the primary or secondary escape ways where
4 possible is safe and reasonable. Miners and operators
5 benefit from permitting such a design from having one known
6 location rather than two separate caches in different areas.
7 We recommend that MSHA reconsider allowing operators to
8 cache SCSRs that can be accessed where possible from either
9 the primary or secondary escape ways. And further, that the
10 90-day test for stored SCSRs should be revised to eliminate
11 the shake test for CSE units not transported or worn carried
12 by the miner.

13 I appreciate your time and that's all my comments.
14 MS. SILVEY: With respect to your testimony on the
15 Part 50 notification and your training exercise that you all
16 did in your safety department in terms of calling MSHA
17 headquarters, we're going to look into that and if there are
18 some improvements that we can make in that process that we
19 can make then, we will do that.

20 In terms of your comment on the evacuation, the
21 1502 program of instruction and the drills, as I mentioned
22 in my opening statement, I only say this because you had a
23 reference to the six-week escape way walk in there, and I
24 mentioned in my opening statement that we are considering
25 putting all those requirements in 1502, just so everybody --

1 I mean, I think as we go on during these hearings, we want
2 to clarify as much as possible so people understand what we
3 are doing in this ETS.

4 And also with respect to fire drills and your
5 comment about on the surface, I think that that was an issue
6 addressed in the compliance guide. Didn't you address that
7 in the compliance? I think so, yes.

8 MR. RUSSELL: Not in terms of the fire drill but
9 in terms of the SCSR training. You can do the training on
10 the surface.

11 MS. SILVEY: Okay. Yes, I mean, the training on
12 the surface, right. That's what I meant, the SCSR training,
13 that on the surface, that was addressed in the compliance
14 guide. So, you know, I'm going to stop here and kind of
15 digress a minute. You know, we all know that the way the
16 ETS set up is set under the law, we have to do it and we
17 have a certain amount of prescribed time for doing it and we
18 want to do it as best we can. And we know we are in the
19 process, we are putting a lot of information out and that's
20 one of the reasons I specifically laid out those 17
21 paragraphs in my opening statement.

22 But when I did that, I said that within a week the
23 transcript should be up on the website, and I think we have
24 copies of the opening statement here. So, I'm saying all of
25 this to say that, you know, it's information out there but

1 we want it out there and we want to hear your response to it
2 before the comment period closes. But if we can clarify
3 anything, we will continue it; if you have any questions,
4 you can continue to ask us and we will continue to try to
5 issue compliance guides to the extent that we can to address
6 issues that you might have.

7 And then, the only final thing I would say and
8 this goes to another one, with respect to the SCSRs being
9 located in the primary or secondary escape way and parallel
10 entries, I think I addressed that in the opening statement
11 also. But if people have specific recommendations with
12 specific specifications for alternatives to what was in the
13 ETS, then get any specifics you have to us. That's all I
14 have to say.

15 MR. SPROUL: Mr. Russell, I have one question
16 about your recommendation on lifelines, and I appreciate
17 your concern with lifelines in the working section with
18 mobile equipment and the possibility of entanglement, et
19 cetera. But you're suggesting that in the intake escape
20 way, that the lifeline start 500 feet outby, and the concern
21 would be how would the miners on the section locate that
22 lifeline in an emergency situation. Do you have any
23 suggestions about that?

24 MR. RUSSELL: No, sir, I really don't. We thought
25 about, you know, it would create we feel more like a hazard

1 to be, waist high all the way up in the supply holes and the
2 different things with the mobile equipment. As we said, 500
3 feet out by the loading point, that would be the closest
4 point we feel would be out of the way of the equipment and
5 the chargers and the power centers and all that.

6 MR. SHERER: One thing, Mr. Russell, there is no
7 requirement that the lifeline be at waist height. You can
8 hang it up against the roof using various methods. There's
9 bungee cords, there's clips, there's different things, so
10 you can get it up out of the way of the mobile equipment.
11 We do still have some concerns about -- wires or that seems
12 to be an area where we need more input and research. Do you
13 have initial suggestions?

14 MR. RUSSELL: No, sir. I mean, I really don't.

15 MR. KRAVITZ: I'd like to make one clarification.
16 In your writeup here, you said MSHA prohibits the use of
17 SCSRs for determining storage locations, you know, live
18 SCSRs. Actually, the proper language here is discourage
19 use.

20 MR. RUSSELL: Right. That's correct. I know what
21 you're talking about.

22 MR. KRAVITZ: Okay.

23 MR. RUSSELL: I didn't make comment to that.

24 MR. KRAVITZ: All right.

25 MR. RUSSELL: We're on the same page.

1 MR. SNASHALL: Do you have any specific episodes
2 where contacting MSHA immediately has impaired the
3 operator's ability to respond in an emergency?

4 MR. RUSSELL: No, sir. The only thing that we
5 would have that would do that in the 15-minute notification
6 would be our responsible person is our control room operator
7 where all the sensors and all those things are, all the data
8 that goes underground. If they had to evacuate the mine
9 because of a mine fire explosion or something related to
10 that at 3:00 a.m. in the morning, it would be very difficult
11 for her to stop to call MSHA during that 15 minutes when
12 she's trying to evacuate 200 people in a coal mine that are
13 in various locations. I'm just giving you an example there.
14 Have we had that? No, sir, we haven't.

15 MR. SNASHALL: Is there any other person, because
16 it is a large operation --

17 MR. RUSSELL: It is.

18 MR. SNASHALL: That not all duties would be on one
19 person, isn't that correct?

20 MR. RUSSELL: Yes, sir. What we have is we have a
21 shop foreman that is there. They could be gone checking the
22 hoist, you know, we have escape way hoists that they are
23 required to check on that particular shift. That is their
24 check daily and shiftly. And he could be gone, there is no
25 one else on the surface other than that. Then the security

1 guards.

2 I'm just saying the 15-minute notification, I
3 understand the reasoning for it but it would be, you know,
4 we just need a little flexibility there to, you know -- I
5 would prefer, you know, taking a citation from MSHA and
6 evacuate the coal mine properly and make sure that everyone
7 is evacuated prior to, you know, stopping the evacuation to
8 call MSHA.

9 MR. SNASHALL: On realistic training, there has
10 been some discussion on the use or introduction of smoke in
11 training.

12 MR. RUSSELL: Yes, sir.

13 MR. SNASHALL: Do you have any position on the use
14 of smoke?

15 MR. RUSSELL: Yes, sir. As far as, we have an
16 area underground that is concrete floors and concrete walls
17 and that we will be setting up for just that type of thing
18 with Hollywood smoke and the lifeline. But as far as doing
19 it out in the coal mine and the entries and all that, we
20 have not gone that far yet.

21 MS. SILVEY: So, to follow on to his question, so
22 you are setting up this particular area for training in
23 smoke --

24 MR. RUSSELL: Yes, we will. We are in the process
25 of doing that.

1 MS. SILVEY: Okay. So, you have not done any?

2 MR. RUSSELL: None whatsoever.

3 MS. SILVEY: Okay. So, do you, to further follow
4 on to that, what's your position on that? Do you think
5 that's, I mean, how do you feel about the training in smoke?

6 MR. RUSSELL: I think donning the rescuer in the
7 Hollywood type smoke in the, like I say in the concrete
8 area, you know, the walls with the, you know, I have no
9 problem with the practice training on it. Out in the coal
10 mine, I've never really given any thought to it. I don't
11 know. But we're looking at setting up just that one
12 particular area.

13 MS. SILVEY: Okay.

14 MR. RUSSELL: And Ms. Silvey, to answer your
15 question, I just got those 17 questions this morning and I
16 realize some were on there. I apologize for that.

17 MS. SILVEY: No, no, no. That's, no, I
18 understand. No problem. In a way I'm kind of reiterating
19 that for the benefit of everybody here at the hearing
20 because I know some people didn't, you know, that's kind of
21 the main reason I'm saying that. Yes. Okay, thank you very
22 much.

23 MR. RUSSELL: Thank you.

24 MS. SILVEY: Our next speaker will be Michael
25 Joseph with Perry County Coal.

1 MR. JOSEPH: My name is Michael Joseph. I work at
2 Perry County Coal. I've been a coal miner for 30 years.
3 And I hadn't planned on coming down here today, I just
4 decided to last night. So, I ain't got no big speech for
5 you or anything like that.

6 I've just got a few concerns. One of them is on
7 the distance that the SCSRs will be stored. You know, they
8 got the 2,500, 5,000-foot rule, or you can make somebody the
9 most physically enhanced person travel that escape way.
10 Well, I submitted a storage plan. And, oh, my coal was over
11 48-inch average so I got to go with 5,000-foot rule, and
12 then I was told that when the inspector come out there, if
13 they didn't agree with it, then they may have somebody to
14 travel my escape way and then a day or two later he would
15 have him travel it under an SCSR.

16 Now, I don't agree with neither one of those
17 things. One thing is that, you know, they could have a
18 heart attack or a stroke and die. And I'm really not going
19 to ask my physically challenged person to walk that escape
20 way. And I don't know of anybody that would have the
21 authority to do that but I may be wrong, but that's one part
22 I don't agree on.

23 The other part, as far as checking the SCSRs, I
24 was told that my storage, outby storage areas, I would have
25 to check those three times a day, go there and look at them.

1 And I don't agree with that either. And we just need to
2 get some kind of ruling, you know, as far as being
3 consistent with everybody what we're going to do, you know.

4 Are you going to let us check those once a year because
5 they're stored? You know, they're not going to get damaged
6 or whatever. But three times a day, that's unrealistic.
7 You've got people that does pre-shifts and their job is to
8 go into the mine and find hazards that will prevent somebody
9 from getting killed or maybe an explosion or whatever, you
10 know.

11 We start having these guys check these SCSRs three
12 times a day, then we're going to take away from their pre-
13 shifts. And the best way to prevent an accident is with
14 good pre-shifts on the shifts. So, I don't agree with that
15 either and that's what I was told, too, when I submitted my
16 SCSR storage plan.

17 Okay. Another thing I didn't agree with was the
18 15-minute rule as far as reporting Part 50. Now, like I
19 hear some other people say, you know, we need some wiggle
20 room or something or whatever because 15 minutes, if you've
21 ever been around a place that had an accident, 15 minutes
22 goes by just like that. You've got a man hurt, you're
23 trying to get onsite EMS to him to render first aid to him,
24 you're trying to get first aid kits to them. You're trying
25 to call EMS. Now, if it takes me over 15 minutes to do all

1 of that, I'm just going to citation I guess and take it
2 because I'm going to take care of my man first. I'm going
3 to make sure he gets the proper first aid and proper medical
4 attention, and then I'll make the call.

5 That's all I got.

6 MS. SILVEY: Thank you.

7 MR. KRAVITZ: You said you disagreed with the
8 method of determining the storage location. Which method
9 would you propose to use?

10 MR. JOSEPH: Well, I agree with the distance.

11 MR. KRAVITZ: You mean, just setting a
12 specification?

13 MR. JOSEPH: Yes. 48 inches is 5,000 feet, isn't
14 that it said?

15 MR. KRAVITZ: 48 and above?

16 MR. JOSEPH: Yes.

17 MR. KRAVITZ: It's possible. That was one of the
18 things we threw out basically as an idea. But we've heard
19 other testimony today stating some other recommended
20 standards.

21 MR. SHERER: What distance did you specify?

22 MR. JOSEPH: What did I specify?

23 MR. SHERER: Yes.

24 MR. JOSEPH: In my plan?

25 MS. SILVEY: Yes.

1 MR. JOSEPH: I believe it was right at 4,000 feet.

2 And we had above 48 inches, we just put it a little bit
3 closer. But as far as making somebody walk that, I don't
4 think that's realistic. You know, we're going to have old
5 coal miners dropping dead.

6 And another thing, too, you know, there's going to
7 be somebody get discriminated against because they weigh 300
8 pounds, they run a roof bone at the face. They're going to
9 go try get a job somewhere and these people ain't going to
10 hire because they're going to say, well, you know, we're
11 going to have to make him walk that escape way to determine
12 our distances. And they just won't hire him because of
13 that. So, I believe that would be unfair.

14 And another thing, too, as far as making everybody
15 physically travel the escape way every 90 days, that ain't
16 going to happen. These people won't do it. These coal
17 miners, they won't walk out of the mines. You've got mines
18 ten miles deep. It would take them all shift to get
19 outside, all shift. And I think it's just to hard a burden
20 on them, you know. And most coal miners, if they're like me
21 and they're about wore out in the knees and the hips and
22 it's hard enough anyway. Now, we're going to provide rides
23 to ride those escape ways and you can ride just about the
24 whole end of our escape ways.

25 MR. SHERER: Both escape ways?

1 MR. JOSEPH: Both escape ways. One of the escape
2 way has rail-mounted equipment that runs on it. And the
3 other escape way, we've got diesel powered mantrips we can
4 use.

5 MR. SHERER: Are you aware of our compliance
6 assistance that basically said you don't have to walk?

7 MR. JOSEPH: That you don't have to walk the
8 escape way?

9 MR. SHERER: Yes.

10 MR. JOSEPH: Well, I was told you did at first and
11 then it kind of backtracked. And I was going to bring that
12 up anyway.

13 MR. SHERER: Sure.

14 MR. JOSEPH: And they did backup and say no, you
15 don't have to physically walk it, because I asked this
16 person, I said, do you, when you go to Lexington, I said are
17 you physically in Lexington? And they said yes. I said do
18 you walk down there? No. I said, well, I don't either but
19 I get there and I'm -- you know, we've got to do some common
20 sense in what we do. And there ain't nobody more for the
21 miner than I am.

22 MR. SHERER: We agree, sir. One other question
23 I've got is you said that you've been told to examine your
24 SCSRs three times a day?

25 MR. JOSEPH: Three times a day.

1 MR. SHERER: Do you know what your SCSR
2 manufacturer's recommendations are for storing SCSRs as far
3 as examinations?

4 MR. JOSEPH: The examinations is the shake test
5 and all that every 90 days.

6 MR. SHERER: That's all that's required by the
7 ETS, sir.

8 MR. JOSEPH: That's all that's required?

9 MR. SHERER: Yes.

10 MR. JOSEPH: So, I don't have to comply with that,
11 too. I get it.

12 MS. SILVEY: Okay. Thank you, sir.

13 MR. JOSEPH: Thank you.

14 MS. SILVEY: Our next speaker will be Tim Baker
15 with the United Mine Workers.

16 MR. BAKER: My name is Tim Baker, it's B-a-k-e-r.
17 I am Deputy Administrator for Occupational Health and
18 Safety for the United Mine Workers. I'm pleased to be here
19 in Lexington. I did miss Denver. And I guess I'll be happy
20 to be in Arlington but I'm going to reiterate something that
21 has been stated before. We have extremely large
22 concentrations of miners, extremely large underground mines
23 in Northern West Virginia, in Western Pennsylvania and in
24 Alabama, and we ought not to be in Lexington, Kentucky. If
25 you're going to be in Kentucky, that's fine. Let's go to a

1 coal field community. Okay, let's go where the miners can
2 go.

3 We've heard from a couple of advocates for miners.
4 We've heard from a lot of company people. And I believe
5 they should have their right to say so, but we can't expect
6 my membership to work 8-10 hours a day, 5-6 days a week, and
7 be able to attend a hearing that's 12 hours away.

8 You have successfully, to this point, eliminated
9 participation by rank and file miners, and that's wrong.
10 This rule is about rank and file miners. This rule should
11 be in the coal fields. This rule should be in -- or this
12 hearing, this hearing should be in Washington, PA. This
13 hearing should be in Alabama. That's where this hearing
14 should be, not Denver, not Lexington. Lord knows not
15 Arlington. I am not aware of any coal mines in Arlington.
16 So, that is one thing that irritates us to begin with.

17 But on behalf of President Cecil Roberts,
18 Secretary Treasurer Dan Kane, the membership of the United
19 Mine Workers, and in fact, miners from across the nation, I
20 am pleased to be here to offer comments to the Mine Safety
21 and Health Administration's emergency temporary standard for
22 mine evacuation. The circumstances that bring us together
23 today are both tragic and preventable. By MSHA's own
24 admission in the preamble to this rule, studies completed as
25 far back as 1990 demonstrated deficiencies in a number of

1 critical areas. The Agency has known donning SCSRs in
2 hazardous conditions pose a problem to miners. You knew
3 evacuation and escape plans were not sufficient and the
4 training was inadequate.

5 Everyone knew after Wilberg, after Pyro, after Cue
6 Creek and after JWR that the regulations on the books were
7 not protective enough to save miners who find themselves
8 trapped after an explosion or inundation. And nothing was
9 done to correct the problem. Nothing has been done to
10 correct the circumstances that existed. This government has
11 failed to act. Despite the pleas from miners and their
12 representatives, MSHA has failed to act. It is unfortunate
13 for the Agency and perhaps a little bit uncomfortable for
14 some of you to accept, but your failure causes heartaches of
15 the deepest kind.

16 The failure of the government has added to the
17 countless number of widows and orphans and surviving family
18 members that is the legacy of this industry. To date, the
19 Agency has failed many workers. This year, 26 times this
20 government has failed to protect coal miners. I must
21 announce to each of you at this public meeting, on behalf of
22 the mine workers, this failure can no longer be an option.

23 The time has come for this Agency to perform the
24 duties for which it was created to do. You're not here to
25 protect the industry. The industry can take care of

1 themselves. They're pretty good at it. You're not here to
2 protect the industry. The Agency's duty is to protect the
3 miners.

4 Coal operators, whether they're surface
5 operations, underground operations on their mines, whatever
6 they are, will take care of themselves. They do not need an
7 agency to enhance their production capabilities as was
8 mentioned earlier because the belt air rule was simply that.
9 It enhanced production capability. It didn't provide any
10 safety, it did the production end. They don't need that.
11 It is time that the Agency falls back to what should be the
12 sole responsibility of the Agency, and that is to protect
13 miners.

14 In this year alone, there have been 14 events that
15 have claimed the lives of miners. 14 failures that took
16 away 26 human beings. In four short months, we have
17 surpassed the total number of deaths for all of 2005 and we
18 are but two away from eclipsing the number of fatalities in
19 2002. It is unfortunate that citing numbers in a given year
20 seems to sanitize the message, and that should be the
21 message that should be heard. 22 in this year and 30 in
22 that sounds very impersonal.

23 It's kind of part of what the corporate industry
24 likes you to hear, ah, it's just a number. It's just the
25 cost of doing business. These miners had names, they had

1 wives, they had children. They had families that loved them
2 and they had families that will miss them. These 26 miners
3 killed in 2006 are Thomas Anderson, Alva Bennett, Jim
4 Bennett, Jerry Groves, George Hamner, Terry Helms, Jesse
5 Jones, David Lewis, Martin Toler, Fred Ware, Jack Weaver,
6 Marshall Winans, Cornelia Shates, Don Bragg, Ellery
7 Hatfield, Shane Jacobson, James Thornberry, Edmond Vance,
8 Paul Moss, Timothy Caudile, Willard Miller, Jackie Toler,
9 Robert E. Runyon, Gary Jones, David Bowen, and Rick
10 McKnight, varying in ages from 72 to 26.

11 They all had names, they all had families.
12 They're not just numbers. They were somebody. Real,
13 honest, hardworking people who should never have had to pay
14 with their lives simply to provide for the family. How many
15 more will there be before the government stands up and looks
16 at what is important? How many more before MSHA decides who
17 the real stakeholder is?

18 There is another fact that I must point out before
19 I get on to the comments on the rule itself. The reality of
20 these situations for those of us who have been in the
21 industry for some time is that had 26 coal miners died, one
22 or two at a time as is usually the case, we would not be
23 sitting here today. It would simply be the cost of doing
24 business. And unfortunately, that is the reality. The
25 price is too high. Coal miners can no longer be expected to

1 pay this price.

2 And I would suggest that I heard earlier today
3 that the Agency and the Bush Administration should be
4 commended because injuries are down and fatalities are down.

5 I would argue that policies and programs that run through
6 the institution or that run through the government take
7 years to take root. I would suggest to you that this
8 administration's policies are beginning to take root.
9 January 2nd wasn't an aberration. January 2nd was the
10 result of years of policies and years of programs that have
11 been put in place that do not enhance miners' health and
12 safety but do advance the needs and concerns of mine
13 operators.

14 I do want to say for the over-arching part of the
15 emergency standard, I believe it is a good first cut. I
16 believe it's a good first cut, it's not where we need to be.

17 I commend those people who worked very hard on working on
18 it. But I must say that this rule generally speaks to coal
19 mining. And being a coal miner myself, I understand that.
20 But there needs to be a broader aspect to this. There are
21 limestone miners. There are any number of other underground
22 miners out there and my colleagues from the United Steel
23 Workers, to be quite honest with you, and the Operating
24 Engineers are quite offended that they feel left out. They
25 feel this rule should have applied to them.

1 And I would agree that any miner's life is
2 precious, that any miner deserves the same protection. And
3 I would suggest as you go through this process that this
4 rule be broadened to include anyone who works underground in
5 the mining industry. Those people need the same
6 protections. And I understand, you know, in some of those
7 industries, you're going to say, well, we don't require
8 SCSRs. Maybe it's time. You know, let's be honest, we have
9 SCSRs in coal mines today because of a 1980 court order.
10 This agency didn't pursue that. It was a court order. So,
11 maybe we need to force those other industries to use SCSRs
12 and being storing them and begin doing those things that are
13 necessary.

14 With respect to the training requirements for the
15 SCSRs for mine evacuations or for escape, and while I know
16 that you have unhinged some of the training requirements
17 from Part 48, I would suggest to you that the union would
18 look at the situation as anything that is dealing under this
19 rule with SCSRs with evacuation training, with escape
20 training, anything that deals with this rule needs to be
21 uncoupled completely from Part 48. It's over-burdened, it's
22 over-taxed. We can't throw another thing into it. Whether
23 it's a new regulation or whether it's a petition for
24 modification at a particular mine, they can't take anymore.
25 Eight hours is simply that, eight hours.

1 And I know that I'll be able to hear from some
2 operators who will approach me and say, you know, eight
3 hours is what you have now. If you want another four to
4 five hours, you're talking away from production, it costs us
5 money. Simply don't care. It's the cost of doing business
6 to train these miners, and some things in these instances
7 must be unhooked so you can prove the importance of that
8 particular topic.

9 I would suggest SCSR training is one of those
10 issues. Escape training is one of those issues. Evacuation
11 procedures are those issues. They need that kind of self
12 importance that says you don't do it with first aid and you
13 don't do it with this issue and you don't do it with that
14 issue. This is important and you have to do it this way.
15 So, we would suggest that anything that deals with that is
16 uncoupled.

17 The union does support the idea of practicing the
18 donning of SCSRs and walking the escape ways. We believe
19 that this will greatly benefit miners who may be required to
20 escape in a hazardous situation. However, we are convinced
21 that the language is not sufficient enough to compel
22 compliance. Federal inspectors are required by the Mine Act
23 to complete inspections of the entire underground areas of
24 the mine every quarter, every 90 days. This includes
25 walking escape ways. The union believes this rule should

1 require the operator to perform these 90-day drills to
2 coincide with the days that the federal inspector is going
3 to examine the escape way.

4 If MSHA does not take, in our opinion, if MSHA
5 does not take an aggressive position regarding these drills,
6 they will be nothing more than paper compliance. Plain and
7 simple, operators will not comply. You will get names if
8 you want names of who walk the escape way. I'm not so
9 certain they really will have walked the escape way.
10 However, requiring it be done with a representative of the
11 Secretary there will ensure compliance. And we believe that
12 needs to be done.

13 Been a lot of discussion about notification within
14 15 minutes. I guess my, and we do agree, 15 minutes, and
15 the argument that you're taking away precious time whether
16 it is to help an individual who is injured or to take care
17 of a disastrous situation I suggest to you is ridiculous.
18 If you're calling from one section to another to get
19 emergency treatment to somebody, somebody on the surface is
20 going to hear that. If there is a disaster, if there is a
21 major problem, somebody on the surface should hear that and
22 it doesn't take that long to make the notification. 15
23 minutes is not unreasonable. As a matter of fact, 15
24 minutes is what we would believe would be adequate.

25 There was a question somehow about communications

1 interruption, if communications was interrupted you could
2 take longer than 15 minutes. I'm a little bit confused by
3 what that means. And if that means communications from
4 underground to the surface is interrupted and it goes beyond
5 15 minutes how long can you wait, I would truly suggest that
6 if there is a report whether that is verbal or whether you
7 get an AMS alarm or whether you get some other communication
8 to the surface that says there's a problem and after 15
9 minutes you're not able to communicate with individuals in
10 that section, I suggest you make a call to MSHA. I suggest
11 you let them sort out the situation.

12 So, any time an event occurs that should be
13 reportable, that should be done within the first 15 minutes.

14 And any fire should be reportable. And the reason that we
15 believe this to be the case is I think that MSHA statistics
16 and MSHA's information will back up that these events tend
17 to occur again and again many times at the same operation,
18 near the same location. So, what we have is we have an
19 event that occurs for maybe 20 or 25 minutes. They put the
20 fire out but then there is never any follow up to make sure
21 the hazard is removed. So, three weeks later we have
22 another fire, and then three weeks later we have another
23 fire.

24 It is a problem. It should be reported
25 immediately. I mean, obviously the most frequently cited

1 section of the regulations is 75.400 accumulations. They
2 can't keep their house clean now, maybe if we give them a
3 little incentive because they got to notify and somebody got
4 to show up, maybe that will keep it a little clean. So, the
5 notification should be for the fires.

6 Directional lifelines, we do agree that the
7 directional lifelines should be in every intake or in every
8 primary and secondary escape way. There should be a
9 national standard that says the cone faces this direction,
10 you know, the cone faces, goes in-by, you know. And if
11 you're going outby and you run into the flat end of the
12 cone, turn around, you're going the wrong way. And if your
13 hand slides over, keep going. There should be some standard
14 that does that.

15 I must say, however, and I'll try not to dwell on
16 this too long, we had several petitions for modification
17 that required lifelines in the intake escape way and then
18 the secondary escape way in Northern West Virginia and
19 Western Pennsylvania. And whenever this Agency pushed
20 through the belt air rule, you eliminated that protection
21 from our membership. You eliminated it at every one of
22 those mines because the judge decided that you deserve
23 deference and they moved ahead, and those lifelines came out
24 of those mines, I want you to know. So, we're glad you're
25 putting them back in but they shouldn't have been taken out

1 in the first place.

2 Plans, when you deal with plans for SCSR storage
3 for your evacuation or for escape, to be quite honest with
4 you, we feel that some of the experts that will deal with
5 this issue have been completely cut out of this picture.
6 There is no seat at the table for miners or the rest. Now,
7 you can say, well, by inference we figure you're going to be
8 there. Or because you're there, we're sure you're going to
9 get included. That's not the case and we all know that not
10 to be the case. In many instances, my membership is able to
11 get there or the union's membership is able to get there
12 because they forced their way into the situation. In other
13 situations, that will not occur.

14 We believe that the final writing of this rule
15 should have some caveat that says you will have miners or
16 miners' reps sit in when these plans are being created, when
17 these plans are being designed, when they're being revised.

18 They have the most at stake here. They should have the
19 most input here. We believe that needs to be included.

20 Generally speaking, for the SCSRs themselves, we
21 believe that there should be a specific distance, and what
22 we believe is that MSHA along with NIOSH and miners' reps
23 should do those studies that determine what that distance
24 may be. And I know that NIOSH has done a lot of studies on
25 these and other issues within mining, but flexibility should

1 not be an option. There should be a requirement that you
2 have caches of SCSRs at certain specific distances and
3 that's the way it should be.

4 We don't see the viability of having 800 different
5 mining operations submit 800 different plans to be approved
6 because we have heard from the Agency for years these plans
7 get unwieldy and out of control and we can't keep monitoring
8 them constantly. That's what we heard on belt air. That's
9 frankly what we heard on belt air. Too many plans, too many
10 modifications, too many of this and too many of that. Now
11 you're going to have every mine with a different plan.
12 Let's formalize this. They don't need flexibility, I don't
13 care what any of them say. In this issue, they do not need
14 flexibility.

15 Training on SCSRs, and we believe training
16 including donning that SCSR and using that SCSR is very
17 important. We have some problem, or I guess I should say we
18 have a major problem with transferring from one SCSR to
19 another. For years and years and years we have said miners
20 do have a difficult time if not trained routinely donning an
21 SCSR. But to have a CSE being donned in a section and
22 switching over to an Ocenco down the line, if those things
23 don't match up identically it's a problem. And I think we
24 should all recognize that problem.

25 What we are suggesting is that at each specific

1 mine site, one SCSR is used. If that's an Ocenco, that's an
2 Ocenco. If that's a CSE, that's a CSE. If that's a burden
3 on the employer, that's too bad. If that's an expense on
4 the employer, that's too bad. The idea here is to give
5 miners the very best chance for escape. We would suggest
6 that having them switch between differing SCSRs causes a
7 problem that ought not to be there.

8 We need this language in this rule when it's
9 finalized to push for new technologies so that rather than
10 having to don the second SCSR, that you simply plug in a new
11 cannister. That would be the optimum. That would be the
12 direction to go. So, not only do we recommend that one type
13 of SCSR per mine, but this rule somehow push, whether it's a
14 manufacturer of this industry and I suggest if you push the
15 industry and require it, they're going to push the
16 manufacturer somewhere to get it, that those new
17 technologies become available. And rules can be technology
18 driving. I think anybody who has dealt with the
19 Pennsylvania diesel legislation will understand it. It can
20 be technology driving.

21 We've had brief discussions with our members about
22 tethering. On the surface, we believe that, you know, tag
23 lines and tethering people together is maybe a very viable
24 and beneficial method of getting people out of the mine.
25 There are some concerns I think that it raises that we

1 haven't had the chance to thoroughly discuss. But at least
2 on the surface, I think that, you know, having everybody
3 hooked together would be a good idea. I think maybe in Alma
4 that might have made a major difference. I mean, I don't
5 know that for a fact but, you know, everybody was together
6 at one time and then suddenly two were lost.

7 So, but we do have to, you know, kind of go
8 through that process rather slowly because there is an
9 obvious concern that if you have ten people tethered
10 together and one man goes down, what do you do at that
11 point? And how do you handle that situation? And the
12 instinct for miners, let's be honest, and you've been around
13 them long enough to know that they're going to drag whoever
14 they can out of there. So, there's some concerns as to how
15 that training should go, how you train people to use the
16 tether and how you train people what happens if these events
17 occur. So, we need to look through those particular
18 scenarios.

19 Heard some discussion earlier about storage of
20 SCSRs in sealed areas, whether that's 200 or 20 or whatever
21 you're going to do, between primary and secondary escape
22 ways. I would suggest to you that if we're going to
23 continue to look at the situation and say, well, you know,
24 that 20 PSI will make our seals good enough, then we ought
25 not to permit it. And the Mine Workers are going to pursue

1 whatever avenue we can to get back to where the Act is
2 because the Act requires that any sealed areas be sealed
3 with bulkhead. The regulation requires 14-inch block laid
4 wet and we got Omega, we got Styrofoam seals in an
5 underground coal mine. And I would submit to you that the
6 test that was done at Lakeland the middle of this month was
7 a farce.

8 20 PSI is not nearly enough to sustain the forces.

9 And maybe a bulkhead won't either but I will tell you this.

10 We saw what happened at Sago. We also know what happened
11 at No. 50 mine in West Virginia where they had an explosion
12 in the sealed area, and those seals withstood the pressure.

13 And those were bulkhead seals. We need to return to some
14 of the roots of where this law came from because we're
15 traveling down a slippery slope that we ought not to be.

16 And I may be almost done. We have had some
17 discussion and we are looking at what to do with mine rescue
18 teams and notification of mine rescue teams. We strenuously
19 object to contract teams. The Act, there is no caveat in
20 the Act for contract rescue teams. There is no caveat in
21 the regulation for contract rescue teams. If you want to
22 run a coal mine, you have a rescue team. If you can't have
23 a rescue team, you ought not to have a coal mine. You know,
24 it's one thing to say we got them in there, it's another
25 thing to be able to have people available to get them out.

1 I understand there is concern for those operations
2 which we have historically looked at as small mines, 20 or
3 less, and that may be a problem and there may be something
4 we need to look at. But large operations have also fallen
5 by the wayside on the number of rescue teams they have
6 available. The way we read the regulation and the way the
7 mine workers read the Act is if you run for instance a
8 three-shift coal mine, you should have three rescue teams
9 because you're required to have two teams readily available.
10 And if you have one team that's underground worker, they're
11 not readily available.

12 At smaller operations, you may well need to have
13 some other setup. But that shouldn't be a contract rescue
14 team that takes me from A Mine and, you know, Jeff Kravitz
15 from B Mine and another guy over here from C Mine and Butch
16 Oldham from another mine who don't work together, who don't
17 train together. I think the Sago experience for those who
18 are familiar with it shows that contract teams do not work.
19 They just do not work. And that's, you know, that's the
20 price of doing business.

21 And before I forget, the lifelines, we would
22 consider lifelines, if they're not fire retardant, they're
23 not worth having. So, there's got to be some play on that,
24 they've got to be fire retardant.

25 For the most part, that is the bottom line of my

1 prepared comments except to say, I guess to finish up, that
2 there are a few things that are undone that the Agency needs
3 to look at. We have not addressed nonflammable belts, an
4 issue that needs to be looked at. The use of belt air is,
5 as Tony Oppegard said, one of the worst things this Agency
6 ever did no matter how people in their own minds convinced
7 themselves that this was a good idea. And if the Agency
8 hopes to restore at least some semblance of credibility with
9 rank and file miners out there, we need to get back to the
10 basics. We need to get back to not dealing with what
11 flexibility the operators need. We need to get back to what
12 in reality protects miners.

13 Flexibility in our opinion is very clear.
14 Flexibility is you eliminate discussion on nonflammable
15 belts. You eliminate discussion on rescue teams. That's
16 flexibility. You no longer talk about surge -- that's taken
17 off the books, that's something we don't need to discuss.
18 And you eliminate talk of formalizing an accident
19 investigation process. And flexibility then means that you
20 allow diesel-powered generators in an underground mine and
21 that you allow the use of belt air to ventilate working
22 sections. That's flexibility.

23 All of those issues, every one of those issues
24 have been relevant within the last six years. The ones that
25 were eliminated benefit operators. The ones that were

1 instituted benefit operators. The miners want to know what
2 benefitted them. They haven't seen much. It's time to
3 refocus. Operators will make their money and operators will
4 find a way to get along. But miners don't necessarily have
5 that option.

6 I'd be happy to entertain any questions. And I do
7 appreciate what I do believe is the first cut of a rule that
8 could be very beneficial.

9 MS. SILVEY: Thank you. I've got a few comments,
10 maybe a couple of questions. With respect to your testimony
11 on walking the escape ways, and I'm sure as you said you're
12 going to provide formal comments to us before the comment
13 period closes.

14 MR. BAKER: Yes, absolutely.

15 MS. SILVEY: But is it your position here today
16 that, and I want to just make it clear on what your position
17 is at least at this point, I'm not saying that it can't
18 change, is your position that the miners should walk the
19 escape ways in all instances?

20 MR. BAKER: My thinking is that miners should walk
21 their escape ways, and I don't know if we do that in
22 segments. For instance, you walk, today you walk to the
23 first cache of SCSRs, and so you've located that. You've
24 done the lifeline thing. And in 90 days, maybe you walk the
25 second portion of that escape way.

1 MS. SILVEY: Okay.

2 MR. BAKER: We do understand an aging workforce.

3 MS. SILVEY: Okay. Well, I just wanted to --

4 MR. BAKER: Yes, we do understand an aging
5 workforce.

6 MS. SILVEY: I understand that. Okay. The next,
7 with respect to the issues concerning tethering, and you
8 gave one, an example, if you have any specific concerns with
9 respect to tethering, if you could include that in your
10 comments?

11 MR. BAKER: I will certainly do that.

12 MS. SILVEY: Okay. The next one goes to with
13 respect to lifelines. In the mines that you are familiar
14 with that use lifelines, are the lifelines -- what are they
15 made of? And are they fire, let me use your term, fire
16 retardant?

17 MR. BAKER: Yes. At the Cumberland Mine in
18 Western Pennsylvania, they actually used a cable with
19 direction cones on it. So, I mean, it's obviously fire
20 resistant. They're not going to burn the cable, and they
21 use those at Cumberland. And I believe that it was a nylon
22 line at Emerald Mine that they used which was fire
23 resistant. And they had the cones and I believe it was
24 every hundred feet, intake and secondary escape ways.

25 MS. SILVEY: Okay.

1 MR. SPROUL: May I follow up on that?

2 MS. SILVEY: Yes. Yes, sure.

3 MR. SPROUL: Do you have any recommendations on
4 fire resistant to a certain standard? Because certainly
5 there's a whole range of definitions of fire resistance.

6 MR. BAKER: Well, and I guess I would probably
7 have to leave that to somebody with greater knowledge on
8 those particular aspects, but I would suggest that if you
9 got a cable, I mean, that works. I mean, and let's face it,
10 then we can't make the argument, gee, this is really
11 expensive to get this flame retardant -- it's a cable. You
12 got them all the time at the mine. So, that may be the
13 solution.

14 MR. SPROUL: Thank you.

15 MS. SILVEY: Okay.

16 MR. KRAVITZ: Tim, you said you would support a
17 specification standard for cache location. Do you have
18 anything in mind as to what you'd support?

19 MR. BAKER: Well, you know, I think that's a
20 difficult question. I certainly don't think that we ever
21 want to go, for instance, and I don't know, you know, how
22 low the mines go at this point, but under 48 inches, you
23 know, if you say under 48 inches, you got to have them at
24 2,500 feet or 2,000 feet. Maybe 2,000 is a better number.
25 How will that affect somebody that's in 36 inches? Is that

1 going to be sufficient enough? Maybe what we really haven't
2 done here is divided this thing up to the full extent it
3 needs to be.

4 I am not familiar with any real low coal mines
5 anymore. I know whenever I first started we had some 24-
6 inch mines, so 2000 feet may be way too far for that guy to
7 crawl. So, maybe we need to do some more division of
8 heights and then make recommendations, well, if it's, for
9 instance, if it's 24 inches, you got to have them at 1,200
10 feet or 1,000 feet. And if it's, you know, four feet, then
11 you got to have them at 25, you know, however those numbers
12 work out.

13 And I just, it's our concern that giving
14 flexibility, these things won't necessarily be placed where
15 miners can best get them. They'll be placed in places where
16 in the event of a disaster they don't get harmed, that these
17 SCSR caches don't get harmed. After all, that's the
18 investment they're making, okay. So, to have that
19 flexibility is not what we're, I mean, is not what we're
20 looking at. Have them available to those miners.

21 MR. KRAVITZ: Thank you.

22 MR. SNASHALL: Do you have any thoughts on the
23 design of SCSR storage space -- not location so much as with
24 the design of the storage itself that could enhance miners'
25 confidence? We have heard that concepts such as safe haven

1 may promote miners' confidence in that they will go into a
2 chamber and be able to more easily don an SCSR.

3 MR. BAKER: And I do actually. To be honest with
4 you, the first time I heard of the safe haven I guess put
5 that way was here. Now, I have talked with some safety
6 folks from other operations who said, you know, if we build
7 a wall on one side and build a wall on the other side and
8 put a cache in the middle, are we okay? That may be
9 effective. But I think there are some parameters we got to
10 look at.

11 If we're simply talking about building a walk or
12 if we're simply talking about building a Styrofoam bulkhead,
13 it's not a safe haven. Those things can't withstand the
14 pressures. And we want them to withstand, if in fact you
15 have a force near there, we want them to withstand that
16 pressure. So, if you're looking at a situation where you
17 have bulkhead with a door in it, that may very well be
18 something to look at.

19 At the same time, if you're not going to have
20 positive pressure inside that particular area, I'm not sure
21 that you can ever call it a safe haven. I just can't fathom
22 how you can say, well, we have this dead air space in here
23 and that's going to be your safe haven because you really do
24 need a positive pressure setup whether that's through a
25 borehole, through piping, however you do that. I think

1 first time you open that door and three guys crawl through
2 you've contaminated the whole area so you don't have a safe
3 haven.

4 A bulkhead with submarine type doors with positive
5 pressure may be a confidence building thing for miners to
6 say that I know I have a place I can go. I know I have a
7 place where I can change out. And in fact, if I screw up
8 donning the self rescuer, I know I have a little more time
9 to do that.

10 MS. SILVEY: I mentioned that term, you say safe
11 haven, I said "safe haven." And at this point in the rule
12 making process in my opening statement, I think I mentioned
13 to you what, at least at this point, is MSHA's concept of
14 what represents a safe haven or a hardened room. And I
15 would reiterate to everybody here, if you have comment on
16 that definition of a hardened room or if you have other
17 specifications, we heard from a commenter who talked about
18 certain things that they were considering and they were just
19 in the process of doing this, they don't have any evaluation
20 results from that right now, but as Jeff mentions to me
21 here, if you have test results from anything, if you have
22 experience with any of these safe havens, or as we called
23 it, I think when I gave it as a definition, I gave it as a
24 hardened, and I specifically as I said talked about how we
25 thought if one were to do that, that they would be so

1 constructed.

2 So, if anybody, you know, has information on that,
3 either specific experience, if you are in the process of
4 doing something with them, if you have evaluation results,
5 if you can get all of that to us before 30 May, we would
6 appreciate that.

7 MR. BAKER: And I would suggest that there are
8 those portable chambers and we just had the chance to look
9 at one of those at our convention. Quite frankly they are
10 costly, depending on what you're looking for. It's my
11 understanding that this particular chamber could hold 12
12 people up to four days and they use these in Australia. And
13 I guess as we look at the situation when you deal with a
14 hardened room or a hardened area, what we would look for in
15 the process is not necessarily something that is built into
16 the mine that can't be moved because now it's 3,000 feet
17 back there and then it's 8,000 feet and then it's 12,000
18 feet and then it's 20,000 feet.

19 This particular chamber that they had could be put
20 either on rails or rubber tires and could be put in a
21 location whether that's a switch, whether that's a crosscut
22 within so many feet of the face of the mine. So, I mean,
23 that is always one option and it does eliminate, and I, you
24 know, want to dispel any rumors, we're not asking for a
25 rescue chamber every 3,000 feet. You know, that's not

1 practicable. But you can move this thing to varying
2 locations.

3 There is also a manufacturer in Eastern
4 Pennsylvania that we're trying to get a hold of who does an
5 inflatable rescue chamber. Some of our folks in West
6 Virginia had the chance to look at that and we're quite
7 impressed. They tried to cut it with a knife, they couldn't
8 cut it with a knife. They tried to poke holes in it, it
9 still sustained its structure. And it was flame retardant
10 and flame resistant.

11 So, you know, there are a lot of things out there
12 to look at. But from our perspective, we do need something
13 that's mobile, something that, you know, advances or
14 retreats with the equipment that you're using, whether
15 that's a continuous miner on long wall setup or whether
16 that's a long wall in retreat, because it doesn't do any
17 good to put a hardened room at the head drive of a long wall
18 section and then you're 20,000 feet up in there and you're
19 never going to make it. I think Wilberg prove that to us
20 you're just not going to make it out.

21 But I will certainly get the specs and get the
22 information on that and, you know, cost issue is going to be
23 an issue that operators will have to deal with. But I think
24 we need to look at that.

25 MS. SILVEY: Thank you.

1 MR. SNASHALL: We've heard that evacuation
2 training under conditions of smoke can be particularly
3 beneficial to the trainee. Do you have any comment on that?

4 MR. BAKER: In my experience, and of course I've
5 never done it in the underground setting, we have used
6 MSHA's facility at Beckley, and even in that where everybody
7 going in there knows that, you know, you don't have to worry
8 now about a real fire or a roof fall or anything else, it
9 can be very, very educational. I think we've had some
10 underground miners that thought that they would be calm,
11 cool and collected, and you can find out in a hurry that
12 some folks are going to be a problem. And I think people
13 need to understand that if they can do those drills with
14 smoke, I think you can find out what, just besides the
15 hazardous condition that exists, what problems you're going
16 to have personnel wise, with the personalities and
17 individuals. And we've seen that.

18 So, I would suggest that that is very beneficial
19 and we've used that at every training we've had at Beckley
20 in the last seven years since I've been around. So, it is
21 beneficial and I would think in an underground coal mine --
22 and I'm trying to think, somebody told me they did one of
23 those in an underground mine and you folks might have been
24 involved in it or it might have been NIOSH, but they
25 actually smoked their underground mine and did a disaster

1 and it was very beneficial to them. You know, they found
2 out who could follow direction and who got lost back in
3 those turns somewhere. So, if you can do it, I would
4 suggest that you do it. And I would encourage the mine
5 worker membership to push for that certainly.

6 MS. SILVEY: Okay. Thank you.

7 MR. BAKER: Thank you very much. And I'll see you
8 in Arlington.

9 MS. SILVEY: At this time, is there anybody in the
10 audience who wishes to speak who did not sign up on the
11 list?

12 MR. FARLER: Ms. Silvey, I have a --

13 MS. SILVEY: Yes?

14 MR. FARLER: When I did my presentation, I made
15 reference to the five-minute travel distance table. And I
16 don't think --

17 MS. SILVEY: Yes. Would you identify yourself?

18 MR. FARLER: Yes. I'm Pearl Farler.

19 MS. SILVEY: Right. Okay.

20 MR. FARLER: That's the five-minute travel
21 distance table that's already in effect.

22 MS. SILVEY: Yes, yes. Thank you.

23 MR. FARLER: And it does address mine heights.

24 MS. SILVEY: Bledsoe Coal Company. So, is there
25 anybody else?

1 MR. FULLER: Mrs. Silvey?

2 MS. SILVEY: Yes, sir?

3 MR. FULLER: Charlie Fuller with United Central
4 Industrial Supply. I did not come to make a presentation or
5 to speak. But, I don't prefer to do that, I would just like
6 to make everyone here aware that there is a product out
7 there and I have some brochures, I'm not here to make sale,
8 I just want to show you what's available.

9 MS. SILVEY: Okay.

10 MR. FULLER: I haven't heard anything about this
11 particular product mentioned today. I do have brochures.

12 MS. SILVEY: Thank you. Anybody else? Anybody
13 else who wishes to speak?

14 Okay. Then if there is no one else who wishes to
15 speak or make any further comment or testimony, on behalf of
16 the Agency and the Department of Labor and of my colleagues
17 who are here, I want to extend our appreciation to all of
18 you who have participated in this public hearing. Your
19 comment and testimony will help us develop a final rule
20 which provides, and this is our goal we're trying to achieve
21 in this rule, to provide the most appropriate and effective
22 protection for miners. And we will do this in a manner that
23 takes into consideration your comment and testimony that we
24 hear throughout this rule making process.

25 As I said earlier, we will have another hearing in

1 Friday, 28 April, in Arlington, and on the 9th of May in
2 Charleston, West Virginia. And we invite you to participate
3 if you can in those hearings. And finally, the public
4 hearing comment period closes on 30 May and we invite you to
5 submit any additional comment and testimony which you might
6 have to us in Arlington.

7 And at this time, having heard that no one else
8 wishes to provide testimony, I will conclude this public
9 hearing. Thank you.

10 (Whereupon, at 12:45 p.m., the hearing in the
11 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Public Hearing on MSHA's Emergency Temporary
Standard for Emergency Mine Evacuations
HEARING DATE: April 26, 2006
LOCATION: Lexington, Kentucky

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
Department of Labor.

Date: May 1, 2006

Ronald N. LeGrand, Sr.

Official Reporter

Heritage Reporting Corporation

Suite 600

1220 L Street, N. W.

Washington, D. C. 20005-4018

Heritage Reporting Corporation

(202) 628-4888